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**Who is Pivotal? A Case Study in Changing Ideology and Tradition in
the Texas Senate**

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Report

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Dedication

“The benefits of education and of useful knowledge, generally diffused through a community, are essential to the preservation of free government.”

Governor Sam Houston

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To my parents, without whom, none of this would be possible.

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Abstract

Who is Pivotal? A Case Study in Changing Ideology and Tradition in the Texas Senate

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Shortly after the Texas Senate gavelled in the 84th Regular Session, they amended the method by which legislation is brought to the floor for full debate. This process, used for approximately seventy years, required two-thirds of the Senators present to support suspending the rules to bring forward a bill. In making this change, the Senators fundamentally altered not only policy development in the state, but also, who was pivotal in making the decision to consider legislation. This research will explore the history of the Senate's two-thirds tradition and some of the numerous instances in which it was circumvented. Additionally, it will analyze a subset of bills that, but for the rule change, would not have been considered to determine the pivotal players in the Senate. It will then use that analysis to examine specific policy changes related to county and municipal land use planning and authority.

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Chapter 1: Introduction

On the opening day of the 2007 legislative session, Senator Dan Patrick, in his first official day in office, interrupted the pro forma proceedings to air his criticism of the body's rules and express his belief that they stifled important legislation from becoming law. The Texas Senate did not operate by simple majority vote or a typical calendar system. It traditionally required the approval of two-thirds of the members present to bring a bill forward for debate. This process, used for approximately 70 years, was thought to enhance collegiately and improve the quality of deliberation and the final legislative product. Patrick argued that because majoritarian rule was favored by many founding fathers, it should be used in the Texas Senate to bring the views of the voters to fruition. While he lost the eventual vote 30-1, he promised to continue the dialogue and eventually prevail.

When Senator Patrick was sworn in as Lieutenant Governor eight years later, he was finally able to fulfill his promise. In his first weeks in office, Patrick ushered in a change to the Senate's rules, reducing the requisite vote to bring a bill forward for consideration (lowering the threshold from two-thirds to three-fifths) and theoretically requiring only Republican votes to advance legislation. Some observers, perhaps hyperbolically, saw this as the demise of what many called the most deliberative body in the world. Others believed modifying the rule was necessary to allow important changes to state law.

While many viewed the Senate's practice as perpetual, this was not the first time the upper chamber circumvented their own traditions for seemingly partisan gain. In 2009, as political activists became increasingly frustrated by the legislature's inability to pass a voter identification law, the Senate amended their rules to allow that specific issue to be approved as a special order using a simple majority vote. Before that, Senators attempted to pass the 2003 Congressional re-districting maps in a special session using a majority vote. There are examples under Democratic rule as well. In 1979, Lieutenant Governor Bill Hobby attempted to move up the date of the state's

presidential primary by setting the bill at the top of the Senate's regular order of business, a violation of the Senate's tradition.

These occurrences are relevant to the discussion of the continued importance of the Senate's super majoritarian tradition. However, there is sparse information regarding its origins. There is not one specific time or event that led to the creation of this process, nor one definitive history as to how the tradition came to exist. Instead, this report will use information from all available sources to create an approximate timeline and explanation of its origins.

Along with the history of the two-thirds tradition, it is valuable to study the root causes for the change and its institutional and policy effects. While Senator Patrick championed the change for many years, there were numerous other factors that prompted such a significant shift in a short time. Also, lowering the required threshold from two-thirds to three-fifths fundamentally altered policy development in the state. Without this change, many bills became law that otherwise would not have had sufficient support. The legislation, some of which had stalled for numerous sessions, will have substantial implications for the entire state.

Because partisanship, in part, motivated the rule change, it would follow that the beneficiaries would primarily be the majority party. An article published towards the end of the 2015 session analyzed a portion of the legislation passed under the new rule. However, it only addressed bills approved before the close of the 84th Regular Session, and before the 85th Regular Session. Subsequently, there have been additional instances in which the Senate debated and approved legislation that, but for the lower threshold, would not have been eligible for consideration (Batheja, 2015). Otherwise, the full results of the rule change have not been widely studied or discussed.

Another aspect that has not been fully considered is how the rule change altered the actual decision-making process and shifted the pivotal players in the Texas Senate. A helpful method for analyzing this can be found in *Pivotal Politics: A Theory of U.S. Lawmaking* by Keith Krehbiel. To explain why gridlock regularly occurs in federal policymaking, Krehbiel developed a model to describe the sequence of play that leads to change. It occurs when the median pivot determines if

the new policy is preferable to the status quo. Then, each player between the median and the filibuster pivot, an area called the gridlock interval, makes a similar calculation leading to either policy change or a continuation of the current (Krehbiel, 2010). When the Texas Senate lowered the threshold required to advance legislation, they effectively changed the rule pivot (similar to the filibuster pivot) and the pivotal players. By analyzing the bills passed with this lower threshold, this research seeks to determine the pivotal players in Texas policymaking after the rule change.

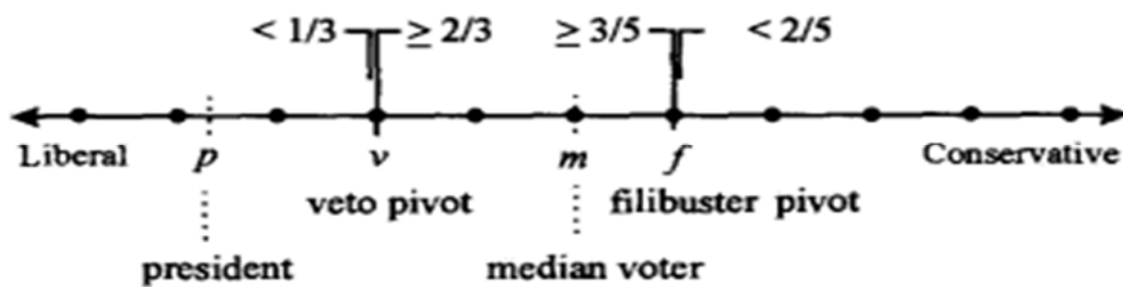


Figure 1.1: Pivotal Legislators (Krehbiel, 2010)

Pivotal players can also be established using ideal point estimation. In analyzing nonlopsided roll call vote results, political scientists can place elected officials on a lowdimension scale, a single plane which contains each member and their calculated ideology, as a means of comparison. This tool is used to measure voting patterns in institutions such as Congress, the Supreme Court, the United Nations, and state legislatures. Mark Jones used a version of this analysis to map the Texas Senate from 2011-2017 (Jones, 2017b).

Along with studying the history and theory of the rule change, this research analyzes the results in terms of policy change. Some of the bills that became law due to the lower threshold related to how local entities engage in land use planning. This authority has evolved over the entire history of the state and varies widely depending on the local government's size and style of incorporation. Analyzing these examples should reveal the effect of the rule change in this domain of legislation and regulation.

This research seeks to expand on the background of the two-thirds tradition and explain why it was amended, determine the effect of the change, and establish the pivotal players in the legislative process. First, it will construct a history of this Senate rule including previous instances of circumvention. Next, it will seek to explain the effect of the change using current theories and research on decision-making and ideal point estimation. Then, it will detail the legislation passed under the lower threshold. Subsequently, using those bills, it will seek to identify the pivotal players in the legislative process. Finally, it will look at specific legislation relating to local land use planning.

Chapter 2: History and Context

The Senate's two-thirds tradition is as steeped in myth and lore as it is in fact. Like most parliamentary rules, it evolved over time to serve the needs of the chamber, changing as the Senate changed. There is no one definitive source delineating the creation and rationale of this procedure so this chapter will compile historical and contemporaneous accounts to piece together how this procedural process came to dominate Texas politics.

Parliamentary rules of procedure allow a deliberative body to act in a purposeful and predictable way, permitting a majority (or supermajority in some cases) of the individuals to develop policy while respecting the rights of those in the minority (Mason's Manual, 1989). The Texas Constitution allows each legislative chamber to develop the rules of its own proceedings.¹ With few exceptions, the Constitution is silent on the day-to-day operations of each body. For that, each chamber must adopt its own permanent rules at the beginning of each session. While each new legislature is able to change or amend the rules, many of the rules have existed for decades, if not centuries. As a simple resolution, the rules need only a majority of members of the Senate to approve of its passage.²

While not explicitly enshrined in the rules, before 2015, the Senate's traditional operation had not changed significantly in at least seventy years. Instead of using the procedure found in the rules, taking up measures in the regular order of business as they are approved by the committees, or as determined by a calendar or rules committee, which is common in many legislative bodies, they have a process built on consensus and the authority granted to the President of the Senate (the Lieutenant Governor). Each session, one committee quickly approves a "blocker bill", an uncontroversial piece of legislation the body has no intention of passing into law (Robison, 2003). Per the Senate rules, the blocker bill is at the top of the regular order of business and the first bill the body should consider. Instead, the Lieutenant Governor, or the Senator occupying the Chair at

¹ Texas Constitution, Article III, Section 11.

² Texas Senate Rules, Rule 21.01

that time, recognizes members to suspend the regular order of business and bring up a specific bill for consideration (Smith, 2015a).

To be brought forward, a bill must be eligible for consideration and it must be published in the Senate Intent Calendar. Established in 1985, the calendar gives Senators advanced warning of what can be debated each day (McNeely, 1999). Each Senator adds bills, which are eligible for consideration, to the Intent Calendar. The number fluctuates according to the time in the legislative session (three before April 15th and five on or after that date). While the Lieutenant Governor retains exclusive right of recognition, he must choose from those bills eligible on the Intent Calendar. This differs substantially from the middle 1950's when Lieutenant Governor Ben Ramsey would handwrite a list of bills he chose to consider that day (Long, 1956).

In effect, the Lieutenant Governor is a one-person calendars committee. Of course, the Senators also have an important role to play. The regular order of business can only be suspended with a supermajority vote of the members present. While there are instances in which a bill does not ultimately have proper support, it is a Senate tradition to only bring forward legislation for consideration when it has the necessary votes to suspend (Bledsoe, 1999). In recent sessions, the number of bills that failed to receive the required vote to suspend has decreased significantly. Some of these bills eventually found sufficient support to pass making the failed suspension seem like an aberration. In other instances, these bills were priorities of state leadership who were likely looking for an official record of support and opposition. For example, in 2007, the bill requiring individuals to present photo identification to vote failed 20-11.³ Legislation that would allow individuals (with the required licensure) to carry concealed handguns on college campuses failed, in 2011, by two votes (19-11).⁴ The same was true of a proposed bill that would require local entities to comply with federal immigration law.⁵ Facing one of the largest budget shortfalls in

³ <http://www.journals.senate.state.tx.us/sjrn/80r/pdf/80RSJ05-15-F.PDF#page=4>

⁴ <http://www.journals.senate.state.tx.us/sjrn/82r/pdf/82RSJ05-20-F.PDF#page=73>

⁵ <http://www.journals.senate.state.tx.us/sjrn/82r/pdf/82RSJ05-24-F.PDF#page=183>

state history, in 2011, the budget⁶ and a health and human services fiscal matters bill⁷ both failed on the motion to suspend. Of course, these few examples comprise a tiny fraction of the total motions to suspend the regular order of business that occur each session.

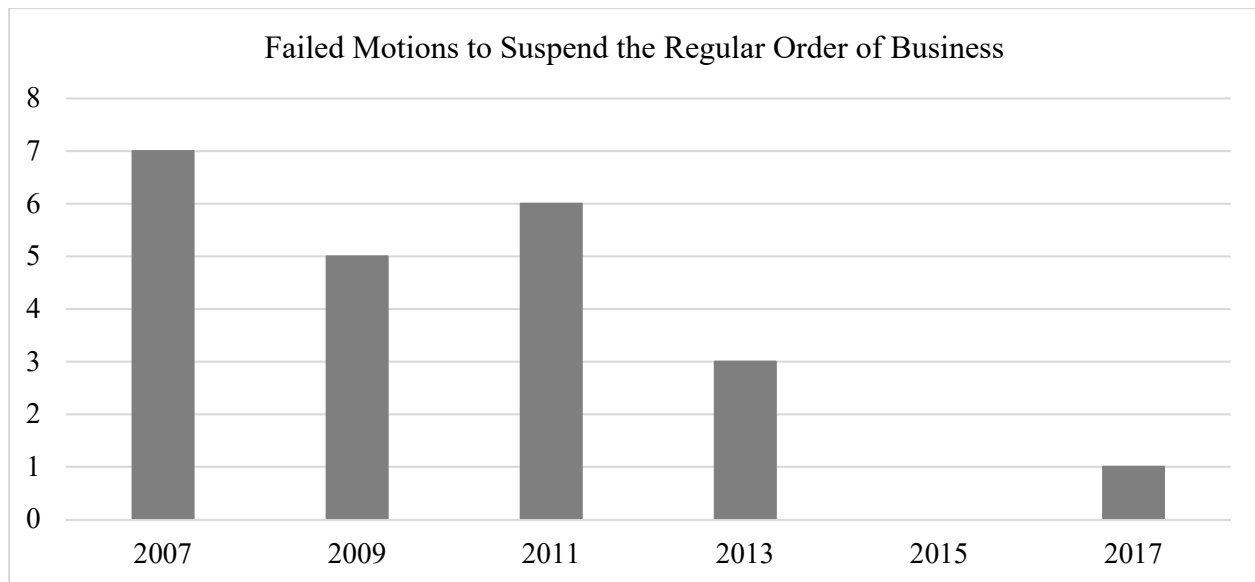


Figure 2.1: Failed Motions to Suspend the Regular Order of Business

2.1. The Origins of a Tradition

The earliest sessions of the Texas Senate operated using a simple calendar system. Under the direction of the Lieutenant Governor, the Senate addressed the day's business, debating and voting on bills as they came forward, until they finished what was required (Texas Politics, 2014). The day's business, known as orders of the day, was determined by the sequence in which bills were approved by a committee and reported to the Lieutenant Governor. As various committees approved items, the full Senate debated them and when the President's desk was clear, the Senate finished the necessary business (Ibid, 2014). Since there was not a formal calendars committee,

⁶ <http://www.journals.senate.state.tx.us/sjrn/82r/pdf/82RSJ05-03-F.PDF#page=54>

⁷ <http://www.journals.senate.state.tx.us/sjrn/82r/pdf/82RSJ04-28-F.PDF#page=29>

this granted substantial power to the committee chairs as they collectively determined the order and amount of legislation the Senate could pass each day of the session. As there were significantly fewer pieces of legislation, this system worked.

Over the years, this system began to strain under the increased amount of legislative activity. The orders of the day grew as the number of bills each committee approved increased (Ibid, 2014). Senators also started gaming the system. Instead of waiting for legislation to come forward, they began to set special orders. In the Senate rules, any measure may be set for special order meaning the bill will be brought up on a specific day and time outside the regular order of business.⁸ Setting a special order required an affirmative vote of two-thirds of the members. As the number of special orders increased, members got accustomed to this greater vote threshold. Eventually, an agreement was likely reached between the Senators and Lieutenant Governor to keep the two-thirds requirement to bring any bill forward for debate (Ibid, 2014).

The two-thirds threshold for setting a special order was not made up out of whole cloth, it existed previously in the Senate's rules and is a common threshold to suspend the rules of a legislative body (Ibid, 2014). In fact, the rules adopted by the First Legislature, in 1846, included Section 21 which required a two-thirds vote of the members present to suspend any rule.⁹ A 1901 Texas Legislative Manual stated that a "vote of two-thirds of all members present shall be required [to] postpone or change the order of business (Cortez, 2003)." In June 1947, the Senate created what is now Rule 5.12 which established the regular order of business and is the basis of the current rule tradition.¹⁰

The central point for this research is determining when the Senate used the suspension of regular order as their standard operating procedure. Sources differ as to when this actually occurred. Lieutenant Governor David Dewhurst suggested the tradition originated in 1931 without

⁸ Texas Senate Rules, Rule 5.11

⁹ <https://lrl.texas.gov/scanned/rules/01-0/RulesSenate1846.pdf>

¹⁰ https://senate.texas.gov/_assets/pdf/SenateRules85.pdf

further elaboration (Rangel, 2013). Others in floor debate stated that the rule began in 1939, 1947, the 1950's, and various other times.

In early 1956, the *Temple Daily Telegram* published a contemporaneous account of this change. The author, Stuart Long, described why a minority of members were able to successfully block legislation such as banking reform. Long notes that the Senate rules are silent regarding this practice, and, in fact, require the Senate to prepare a calendar of the bills eligible for debate as they were voted out of committee. He claims that beginning in the late 1940's, the Senate under Lieutenant Governor Allan Shivers began to abandon this system in favor of using the suspension of the regular order. By 1951, this became the standard practice of the Senate under the direction of Lieutenant Governor Ben Ramsey (Long, 1956).

According to Long, even then it was impossible to pinpoint an exact moment in time when the shift began. In the Shivers era, from 1947-1949, Senators began setting numerous special orders to exert control over the flow of legislation. By voting to set a significant number of special orders, the Senators were able to dominate the Senate's floor time, delaying the regular order of business. If enough special orders were set, it had the effect of postponing specific pieces of legislation from reaching the floor. Extensively debating a minor point or issue in an effort to derail the calendar or a specific bill is a tactic credited to the Texas House of Representatives, and it is commonly known as chubbing. It is especially effective towards the end of the session when rules-mandated deadlines start to take effect (Ibid, 1956).

The increase in special orders succeeded in delaying and derailing specific pieces of legislation. According to Long, the number of special orders increased substantially from 1947 to 1949 as motions to suspend the regular order decreased. When Ben Ramsey became Lieutenant Governor in 1951, the practice of setting special orders seems to have been abandoned. Long noted that the rules from that session do not have a procedure to set a special order. This seems to be confirmed by the fact that not a single motion to set a special order was made. Instead, the Senate had nearly fully adopted the process of suspending the regular order of business. Finally, in 1953, motions to suspend had become the norm, far outpacing the one special order set (Ibid, 1956).

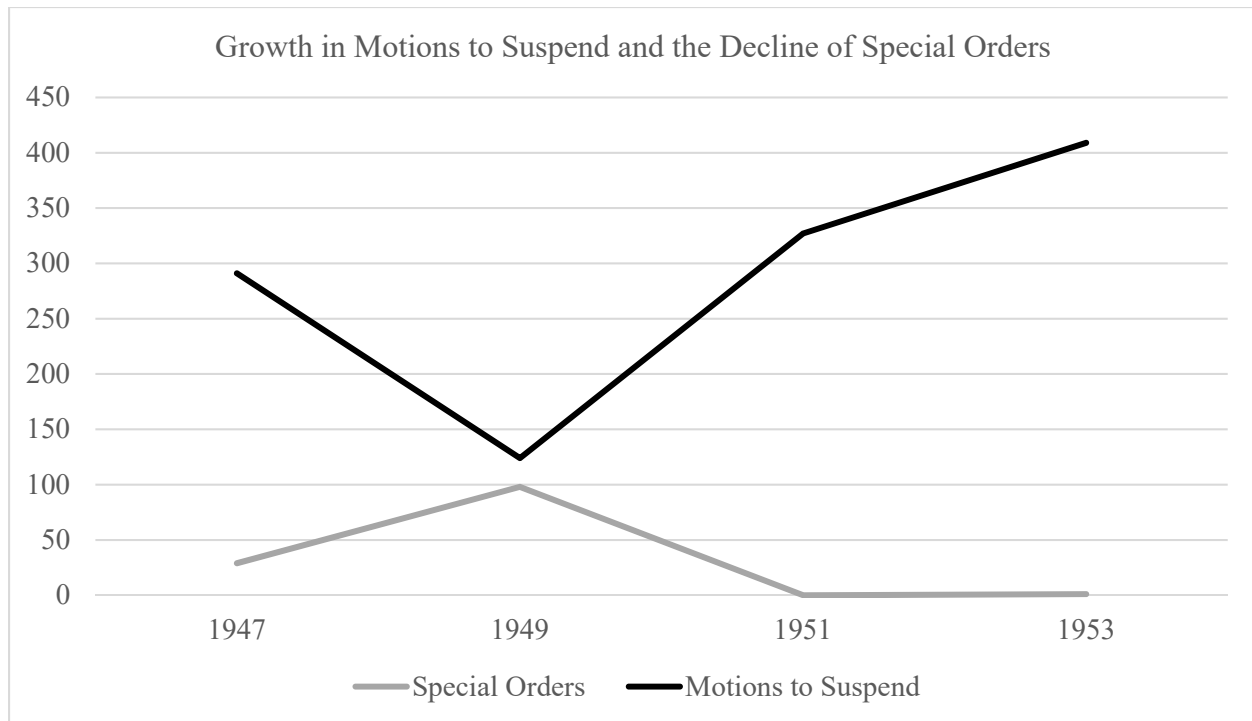


Figure 2.2: Growth in Motions to Suspend and the Decline of Special Orders (Long, 1956)

The next session, however, Senator Grady Hazlewood attempted to kill the tradition in its infancy. In 1955, he authored a resolution to prescribe the Senate operate under the regular order of business which he dubbed the “Senate Calendar”. It also required a vote of four-fifths of the members present to suspend the regular order of business. Surprisingly, the resolution garnered the support of a majority of those present. However, Lieutenant Governor Ramsey ruled that since the resolution was introduced too late in the session, it would require a supermajority for approval. While the Senate obviously continued with the tradition, some still saw issue with the process. Senator A. M. Aikin considered challenging Ramsey in the next Lieutenant Governor’s race and using the calendar as a central plank in his candidacy (Ibid, 1956).

Long somewhat mistakenly says that the minority hold of the Senate began as the suspension of the regular order of business fully took effect. The distinction between that procedure and setting a special order is relatively minor as both required a two-thirds affirmative vote. The difference lies in who has the authority to set the agenda, the Lieutenant Governor or the

Senators themselves. In using the regular order of business, the power was held by the committee chairs and most bills only needed a simple majority vote for passage. Setting special orders also allowed the Senators to control the agenda, albeit with a higher level of required support. Only the suspension of regular order places most of the power with the Lieutenant Governor.

The arguments used by Long are quite similar to the arguments used by those who oppose this process today. The tradition gives the President of the Senate tremendous power in determining the order of business and guiding the policy priorities of the chamber. It also gives a small minority of Senators leverage in blocking legislation they do not favor to the detriment of the majority. Finally, the rule doesn't foster public debate as most of the negotiating occurs off camera; when the time comes for a bill to be brought up, it has the necessary votes to pass. This is also true in committees, since they can rubberstamp items knowing the bills will face greater scrutiny later in the process (Ibid, 1956).

2.2. Tradition Circumvented

While the vast majority of bills passed by the Senate are done so using this procedure, there are numerous instances in which the tradition was bypassed. One of which was in 1979 when Lieutenant Governor Bill Hobby attempted to create a separate, preceding presidential primary to give Texas increased influence in picking the party's nominee. This concept had the support of a majority of Senators, but not the number required to suspend (Hobby, 2010). So, Governor Hobby took care of all of the necessary business to put the bill at the top of the regular order. Towards the end of the session, Hobby announced his intention to follow the regular order of business, allowing the primary bill to be debated and passed with a simple majority (Ibid, 2010).

A sufficient number of Senators opposed the bill and argued that Republicans would vote in the first primary for former Texas Governor John Connally, then a presidential candidate, and then vote in the second primary for the most conservative Democratic candidates (Ibid, 2010). To prevent Hobby's efforts, those Senators fled the capitol which broke quorum and halted all

business. The Texas Constitution requires that two-thirds of the membership of the House and Senate be present to conduct the state's business.¹¹ Without a sufficient quorum, the work of the legislature grinds to a halt, which makes this tactic attractive to members in the minority. Because it was the end of the session, this abscondment endangered numerous other pieces of legislation, not just the offending primary bill. Hobby eventually relented and agreed not to bring the bill forward for consideration which allowed the stray Senators to return. In his book, *How Things Really Work: Lessons from a Life in Politics*, Governor Hobby reflected on his decision with deep regret.

The Senate rules are designed to create an orderly process that respects the rights of individual members. They have lasted this long because they do the job well and consider the need for compromise in the legislative operation. Trampling the rights of the minority is never a good idea, but despite my bad experience, it has happened over and over again (Hobby, 2010, 136).

Another example of circumvention of the rules occurred in a special legislative session. The Texas Constitution grants the Governor sole authority to convene the legislature in an extraordinary session, for any purpose.¹² Whether the Senate should use a blocker bill during a special called session is a controversial subject. Since the practice of suspending the regular order of business is a tradition, and not the process enshrined in the rules, it is not required. And because the Governor determines which items will be addressed, and the list is typically narrow, there is lesser need for strict control of the agenda. During the contentious 2013 and 2017 special sessions, the Senate operated primarily under the regular order of business with a simple majority vote to approve legislation.

The same was true during the 2003 special session on redistricting. State Republicans sought to change the Congressional redistricting maps, once they fully controlled the state government, and before the traditional period following a decennial census. The new maps would significantly change which representatives Texans sent to Congress, giving Republicans at least

¹¹ Texas Constitution, Article 3, Section 10.

¹² Texas Constitution, Article 4, Section 8.

five additional seats from the then makeup of 17 Democrats and 15 Republicans (Ratcliffe, 2003). While the higher threshold governed during the first special session, Lieutenant Governor Dewhurst chose to bring up redistricting under the regular order of business in the next special session. To prevent this from occurring, the Senate Democrats flew on a private plane to Albuquerque, New Mexico to bust the quorum. This was months after Texas House Democrats fled to Ardmore, Oklahoma, also to avoid redistricting (Madigan, 2003).

Since redistricting is, in part, governed by the federal Voting Rights Act, Senate Democrats attempted to make the case that circumventing the two-thirds tradition without prior approval from the Justice Department was discriminatory against voters (Ratcliffe, 2003). The United States Supreme Court eventually agreed with a lower court that the Texas Senate was within their rights to use a simple majority to pass legislation (Pasztor, 2004). They concurred with the state's argument that "an overbroad reading would allow federal law to seriously encroach on the internal governing procedures... and dictate how the Senate calendar and daily flow of legislation through the chamber is conducted (Ratcliffe, 2003)." Eventually, one Democrat returned to Austin, reestablishing a quorum and allowing the Senate to pass the new maps.

The leaders of the Senate followed a similar path in the 2013 special session. Originally, Governor Rick Perry called lawmakers back to address redistricting, allowing the state to adopt court-drawn maps and removing the districts from legal limbo (Root, 2013). Lieutenant Governor Dewhurst then petitioned the Governor to add numerous measures that failed to pass during the regular session (in part due to the two-thirds tradition). "Given that a number of members from both chambers have demonstrated their unwillingness to find consensus on these important legislative items, I can see no other alternative than to operate under a simple majority vote in the special session (Ibid, 2013)." This led to the now famous filibuster that helped Senator Patrick build the case for his insurgent campaign against Dewhurst in the next primary election.

The irony of the 2013 special sessions was that Senator John Whitmire thought he could avoid this outcome altogether. In 2003, Whitmire was the Senator who left New Mexico and returned to Texas, to the chagrin of his fellow Democrats, to reestablish a quorum and to allow the

Republicans to pass their redistricting plan. "At the time, Whitmire felt the condemnation was worth what he had secured in return: a promise from Lt. Gov. David Dewhurst that he would abide by the Senate tradition of requiring a two-thirds vote to debate bills on all issues besides redistricting (Hart, 2013)." Dewhurst, for his part, believed he had no other choice. "I see no other alternative than to operate under a simple majority vote in the Special Session. The Legislature was unable to pass a number of important bills intended to protect and expand the freedom of Texans and cut the size and scope of government (Ibid, 2013)."

From the onset, the 2011 session was strongly shaped by the significant fiscal challenges lawmakers encountered. The state faced an estimated \$27 billion shortfall, due to the economic slowdown from the great recession (Fikac, 2011). The House was able to pass an austere budget given their simple majority requirements and the supermajority of Republicans ushered into office by the 2010 elections. The Senate, however, was determined to craft a budget without significant reductions to public education and Medicaid. The budget passed by the Finance Committee reduced spending by \$14.5 billion, but it was still \$8.5 billion greater than the plan approved by the House (Ibid, 2011).

The Finance Committee's budget proposal included additional funding of \$3 billion from the Economic Stabilization Fund. The use of this account for ongoing expenses cost the bill necessary votes from the conservative lawmakers in the chamber. By eliminating funding from the ESF, and reducing spending in the budget, the bill lost necessary support from the Senate Democrats (Ibid, 2011). When Senator Ogden sought to bring the bill forward for debate, the motion to suspend the regular order of business failed along party lines. The following day, Senate leadership used an arcane provision in the rules to bring the budget forward with a simple majority vote. Rule 5.10 designates Wednesday and Thursday as "House Bill Days" meaning legislation that originated in the House, in this case the budget, is considered at the top of the calendar, and thus, does not require suspension of the regular order (Ward, 2011). While this is clearly allowable under the rules, it does bypass the supermajority tradition and is rarely used.

Chapter 3: Literature Review

Political scientists have long sought to organize and explain legislative behavior. By doing so, they can examine the actions of an entire body and establish an individual legislator's preferences and beliefs as manifested in their voting. When combined, they explain the decision-making processes that result in continuing the status quo or adopting new policy. This chapter seeks to review and merge these two threads; how the individual preferences and behavior of a legislator manifest in the decision-making of the entire chamber, and the literature and research that examines and explains this phenomenon.

3.1. Pivotal Politics

In his book, *Pivotal Politics*, Keith Krehbiel seeks to answer the deceptively straightforward question of who is pivotal in political decision-making. To develop this model, he begins with the base concept that in choosing between a policy change and the status quo, gridlock is common, but not constant, and winning coalitions are often larger and more bipartisan than the minimum procedural requirement (Krehbiel, 2010).

First, the model must assume that each member has an ideal point, not dissimilar from the ideal point estimation and Bayesian models, and that those points can be arranged on a unidimensional policy space. He also assumes that legislators are individual utility maximizers, not simply partisan loyalists (Ibid, 2010). In the case of the U.S. Senate, the pivotal players are those at the filibuster and veto pivots. These individuals must determine whether the status quo or the proposed change fits their policy priorities, or better maximizes their utility, and make decisions on those determinations. If, in their estimation, the policy change can improve on the status quo for the median pivot (simple majority of the body), the filibuster pivot (three-fifths), and the veto override pivot (two-thirds), then it can overcome the common but not constant gridlock (Ibid, 2010). This significant hurdle is one reason Krehbiel believes that winning coalitions are usually large and bipartisan. It also lends credence to incremental policy making;

building winning coalitions for substantial policy change and overcoming the gridlock interval is usually infeasible compared to the ease of relatively minor changes which can gain greater support (Ibid, 2010).

To evaluate the spatial role of the filibuster pivot, Krehbiel analyzes Senators who switch their positions from one cloture vote to another, theoretically those that are indifferent between the status quo and a new proposal. This seeks to determine whether those on the filibuster pivot used their position to seek policy change, in comparison to a majoritarian procedural vote (Ibid, 2010). He further assumes that to maximize their utility, legislative leaders seek to influence only those whose votes can be obtained. Since there are significant time and resource constraints, those whose votes are guaranteed (affirmative or otherwise) are less likely to be sought, and those whose votes are relatively more economical are more effectively pursued. He concludes by confirming the pivotal politics theory; vote switching is typically focused along the filibuster pivot rather than the median voter (Ibid, 2010).

Krehbiel's observation that if leadership is effective they would pursue only those votes that were accessible is crucial to understanding realpolitik legislative behavior. Because this is critical to implementing legislative priorities, most successful politicians understand this reflexively. In effect, this serves the same purpose as seeking to establish who is pivotal in the political process. By identifying those key decision makers, legislative leadership could determine who is the most likely to support a measure with the fewest concessions.

The filibuster pivot is the most relevant to this research. Similar to the United States Senate, by requiring a super majoritarian procedural vote, the locus shifts from the median voter to the filibuster pivot, or rule pivot in the Texas case. Krehbiel echoes Binder and Smith's assumptions, to be addressed later, that individual members do not make decisions based on the associated procedural motions insofar as their effect on policy outcomes (Ibid, 2010).

3.2. Politics or Principle in the Filibuster

In their book, *Politics or Principle? Filibustering in the United States Senate*, Sarah Binder and Steven Smith seek to dissect the myth of the Senate's filibuster from the historic reality and practical effects. While this does not always work as a direct comparison to the Texas Senate's two-thirds tradition, there are many similarities and parallels. Many have noted the rise of the filibuster to delay legislation. Binder and Smith argue this is not due to individual Senator's interests in protecting extended debate and minority rights, but simply, their own personal political power and policy preferences (Binder, 1996). They further argue that Senators are more likely to filibuster when the political cost is relatively low. Inversely, when the cost is excessive, senators are less likely to risk stalling legislation. Thus, a combination of incentives, including greater workload and partisanship, have led to the current environment of substantial filibustering which allows for a Senator to serve as a one-person veto (Ibid, 1996).

Binder and Smith also take on a long-standing myth regarding the Senate, that the founders intended to form a super majoritarian body where debate could last indefinitely, regardless of the wishes of the majority. To their point, the composition and function of the Senate following the Constitutional Convention does not support this claim. Seeking a body that would temper the rash demands of the public, the framers composed the Senate of members who were supposed to be older and wealthier than their House compatriots. The indirect method of their appointment would also limit the public's influence on the upper chamber (Ibid, 1996). These institutional protections were not contemplated to flow down to the chamber's rules. In fact, there was little discussion of the operation of the Senate. Much like the Texas version, the United States Constitution requires the Senate to determine the rules of its own proceedings. Some believe the recent experiences with the Articles of Confederation soured the framers on super majoritarian requirements (Ibid, 1996).

When the role of the Senate in national policy making increased, the personal political significance of obstruction increased. Combined with a greater Senate workload, this allowed for the heightened success of the filibuster. By 1915, many perceived the filibuster as a means to protect partisan interests compared to the aspirational, if not untrue, characterization that extended

debate was crucial to the nation's democracy (Ibid, 1996). This led to the adoption of Rule XXII in 1917, known as the cloture rule, which for the first time allowed a supermajority to end debate and proceed to the merits of the legislation. Like most policy, this change was the politics of the possible, not the perfect. Over forty Senators were willing to adopt a simple majority requirement for cloture, but in the face of opposition, they settled on a two-thirds threshold of those present and voting (Ibid, 1996).

Beginning in the 1950's, opponents of the filibuster challenged the cloture rule in nearly every Congress (Wawro, 2010). The beginning of each congress allows the Senators to adopt, by simple majority vote, new rules to govern their proceedings. While tangled in a complex parliamentary web, Senate Resolution 4 of 1975 set the precedent for a majority cloture vote (Ibid, 2010). Ultimately, the bar for cloture would be lowered to three-fifths of those duly chosen and sworn in. As a compromise, the Senate also shut the door on most future votes to lower the cloture threshold by requiring a two-thirds supermajority approval. In the process, they reversed the precedent of a majority cloture approval. This divided the group of reformers, as some believed that requirement would impossible to achieve in future debates (Ibid, 2010).

To the primary thesis of their book, Binder and Smith seek to determine if the filibuster is a matter of principle or another means for partisan ends. Theoretically, if the tradition of unlimited debate were essential, Senators would take a principled, consistent stand against cloture. Alternatively, if a Senator believes strongly in the ability of the majority to enact change unilaterally, the Senator would dependably vote for cloture to move to the substance of the issue (Binder, 1996). Binder and Smith find these cases rarely exist. From 1917-1994, only 15 Senators voted in a principled, consistent manner, four in constant support of cloture and 11 against. Generally, they find that Senator's views on each cloture vote are fairly predictable based on their political and regional affiliations. While some may argue that the Senators are simply employing the full parliamentary arsenal, using the rules of engagement to their advantage, it certainly cuts against their principled argument (Ibid, 1996).

Binder and Smith seek to address other misconceptions of the filibuster including the so-called “little harm thesis”. The theory argues that the filibuster has not hindered any measure of importance to the country; if the policy was truly necessary, it would gather more than enough support for passage (Ibid, 1996). Alternatively, the greater vote threshold likely impeded harmful legislation from being enacted. The thesis is difficult to prove or disprove, because it would require subjective judgment as to what is important or insignificant, favored or unpopular. While Binder and Smith attempt to explain their suspicions of the theory, they can only use qualitative approaches, recounting stories of legislation unable to clear the cloture threshold. In fact, they only found approximately 30 instances of halted legislation from 1922-1994, many of which related to civil rights. But these were only measures actively ended by a filibuster. They also found many instances in which the threat of a filibuster substantially changed the content of the policy proposal (Ibid, 1996).

An offshoot of the little harm thesis is the theory that the filibuster has a moderating influence on legislation. Binder and Smith have a difficult time disputing this notion as well. Similarly subjective, this argument relies on a hypothetical distribution in which the 51st Senator is further from the median of the body than the 60th. If the 60th Senator is further from the median, than it could hardly be said that achieving the Senator’s support would be a moderating force (Ibid, 1996). Given today’s highly partisan Congress, it is not a stretch to believe the distributional space between those two points is significant. This theory also assumes that the status quo is generally the more moderate outcome because the threat of a filibuster often makes policy change difficult. Given the trend towards sunset provisions, usually in the form of reauthorizations, the status quo would mean the elimination of the policy. That is generally less moderate than its continuation (Ibid, 1996).

Binder and Smith conclude by outlining a hypothetical environment in which the cloture threshold could be changed. They believe it would require public outcry for obstructing a piece of important legislation, disappointment from a sufficient number of senators at the inability to enact

change, and frustration from individual senators whose policy goals are thwarted by the current rules (Ibid, 1996).

3.3. Ideal Point Estimation

A key to analyzing broader policymaking is determining the discreet preferences of those making the decisions. An advancement in this is ideal point estimation, an encompassing term that covers many iterations of a spatial model for individual preferences and beliefs. These models take a decision-maker's available votes and arrange them in a comparative format. By doing so, researchers can examine their preferences to draw conclusions on how they fit into their respective bodies and the broader context of policymaking.

The significant use of ideal point estimation is likely due to its bridging theoretical politics and decision-making and the actions of those in power (McCarty, 2010). These models typically have two main assumptions, that a legislator's preferences are single-peaked and symmetrical. If all possible decision points are visualized on a single plane, a decision-maker can only have one that is closest to the decision-maker's own preferences, often called the ideal point. If there are two alternative options, equally distant from the legislator's ideal point, the legislator has no preference between the two. Finally, if a legislator is voting sincerely, the legislator would choose the option closest to the ideal point (Ibid, 2010).

There is significant debate as to what the ideal point actually means. Theoretically, an ideal point represents a legislator's views and all other considerations that comprise the legislator's eventual vote (Ibid, 2010). Historically, it is understood as a decision-maker's beliefs, usually interpreted using accepted terms such as conservative and liberal. These beliefs can often be broadly categorized as the legislator's view of the role of government in the nation's economy or broader fiscal matters (Bateman, 2016). While this defines many votes taken, it does not explain others that have little fiscal bearing. For this, some believe political elites fold new issues into their existing ideological catalogues which may or may not have direct relation to the economic role of

government. Some issues, such as tax cuts and defense spending, have a natural tie, but others, such as criminal justice and social issues, do not (McCarty, 2010).

Some main tenants have been established through numerous studies on the topic of ideal point estimation. First, a legislator's ideal point generally remains stable throughout their entire career. Even in examples of constituency change (such as redistricting or moving from the House to the Senate) or external political shocks, ideal points statistically remain relatively constant (McCarty, 2016). Second, members rarely represent the median ideology of their constituents. For example, Senators from the same state usually have different voting patterns, especially if they are from opposing parties. This is also confirmed when members have significantly different voting patterns from their predecessors meaning one or both did not represent the district's median constituent (McCarty, 2010). Finally, while it may be necessary to create a model with uniform behavior, many legislators are likely behaving strategically related to the effect of their vote, as opposed to just sincerely voting based on their core beliefs. Further, some members also use abstentions deliberately, possibly to avoid taking a public position on a contentious issue (Clinton, 2012). This is pertinent because some votes, such as the suspension of the regular order of business, are based on those present and voting, as opposed to cloture which is determined by the total number of members serving in the body.

While the theoretical understanding of ideal point estimation is established, there have been continued changes to its calculation. The NOMINATE model created by Keith Poole and Howard Rosenthal was the earliest iteration of a static probabilistic model with a bell-shaped utility function (McCarty, 2010). Later versions such as D-NOMINATE and DW-NOMINATE were more dynamic models that allowed comparisons across different Congressional sessions so that researchers could study members who did not serve together. They found that one dimension (previously discussed as the economic role of government) explained about 83% of the votes taken. When included, a second dimension explained little more, excluding specific periods such as the civil rights era where racial matters were routinely contested in Congress (Ibid, 2010).

Recently, researchers have made substantial progress using a different model, Bayesian estimation, which assumes legislator's preferences are quadratic. Compared to NOMINATE and its progeny which use a frequentist methodology, fixed parameters, and randomly distributed data, Bayesian models assume randomly distributed parameters and fixed data distribution (Everson, 2016). Using this computation, researchers can make probabilistic statements in comparing legislators, unlike previous models. The Bayesian model also allows researchers to include additional information, such as interest group ratings, to contextualize important issues and extremist voting (Clinton, 2004). Bayesian estimation can also test alternative models of voting such as logrolling. While they significantly differ in approach and methodology, Bayesian, NOMINATE, and others all have results that substantially correlate (Everson, 2016).

Although ideal point estimation is a powerful force in political science, it is not without controversy. One significant criticism of ideal point estimation is the ideological labels assigned to each data point, and legislator, are constructs that have no absolute meaning. The dimensional continuum is often labeled "liberal to conservative", but those descriptions are difficult to interpret especially in historical context. Not only is it nearly impossible to define those ideologies as they evolve throughout history, it can be difficult to assign those labels to specific issues, especially as the issues themselves change over time (Bensel, 2016). This creates an impossible catch-22 because the purpose of ideal point estimation is to reveal the underlying ideology of decision-makers, but outside of its theoretical structure, the scores are just an aggregation of votes (Caughey, 2016). "The DW-NOMINATE project... perhaps exemplifies the trade-offs between complexity and parsimony in political science, providing researchers with a single measure of ideology that can ostensibly be applied across time but which relies on assumptions that many historically oriented scholars might find untenable (Bateman, 2016, 148)."

Also, ideal point estimation condenses a legislator's entire ideology and intentions into a single metric which is unable to differentiate between the underlying policy and other motivations such as logrolling and party agenda. Since most ideal point estimations are built on the assumption that members are voting sincerely, it is improper to test other models such as logrolling (Clinton,

2004). The belief that an ideal point is a pure demonstration of a legislator's preferences ignores or minimizes all other influences, such as their constituency, party, and ambition (Binder, 2007). In compressing the entire decision of why to support or oppose a measure into a single data point, which is used in conjunction with all other votes to create another single data point, the estimation removes all nuance from what is an inherently complex process. "The concept of an 'ideal point'... theoretically strips a member of all interpersonal, cooperative (or competitive) relations, reducing policy choices to individual selection from a universe of objectively defined possibilities (Bensel, 2016, 197)."

While it certainly does have drawbacks in interpretation and theoretical underpinnings, ideal point estimation has significantly expanded our understanding of political processes, and it can be used to examine specific phenomena. These computation methods may not produce pure ideological measures of legislators, but the results do explain a large proportion of votes over time. Those results, as noted earlier, are remarkably similar throughout a legislator's tenure and present what seem to be partisan differentiations. While it may not be capable of issue specific analysis, the explanatory power is significant when there are a substantial number of roll call votes. Also, with increases in computational ability, technical advantages will no doubt expand this research and may lead to additional uses and the testing of many additional behavioral models (McCarty, 2016). Another non-insignificant aspect of NOMINATE and its alternatives is that it is accessible to any researcher or observer,¹³ and it covers every vote taken by every member of Congress in history (Caughey, 2016).

In the original version of the Bayesian spatial modeling, Clinton, et al., seek to ascertain who is the pivotal legislator (Clinton, 2004). They note that for legislation to progress in the federal system, there are supermajority requirements which make the pivotal player critical to the study of legislative behavior. Specifically, they attempted to establish who is likely to be the median voter, the veto pivot, and the filibuster pivot. Between those points are members who fall into the

¹³ <https://www.voteview.com/>

gridlock interval. To map decision-makers, Clinton, et al., sample their ideal point (using their Bayesian method), distribute the ideal points, and determine which legislator is pivotal. Using this method, they were able to easily identify the median voter and the location of each pivot, but had difficulty determining who would be the actual pivotal vote in specific instances. They did, however, provide a range that shows the probability each legislator will occupy a pivotal point (Ibid, 2004). This will become important in later sections, because a similar process is used to determine if the pivotal players in the Texas Senate can be identified.

Chapter 4: Change, Cause, and Effect

In many ways, the opening day of the 2007 session was the beginning of the end for the storied two-thirds tradition. While Senator Patrick was unanimously defeated, he telegraphed what would become a biennial fight. He also formed an argument that would echo in numerous primary elections. He contended the tradition was not particularly old and that it was created as a means of setting the agenda when the Democratic Party completely controlled the Senate. In fact, following the rule change, not a single Republican was elected to the Senate until 1967.¹⁴ He noted that two-thirds was an unrealistic benchmark and that no state legislative body operated with such a high threshold. He echoed the comments made in the *Temple Daily Telegram* article that the rule allowed committees to rubber stamp legislation without real debate, with the true decision-making done out of public view, and that no controversial bill is heard on the floor of the Senate. While he did not gain a single additional vote, Senator Kyle Janek, serving his final session, expressed frustration with the implementation of the rule. He believed the public deserved greater accountability and transparency than a minority of Senators blocking a bill without a public declaration of their position. Patrick closed on a prophetic note, stating that the issue would continue to permeate and yield discussion as long as he was a Senator (Senate, 2007).

Patrick's deep concern over the process did not begin when he was elected to the Senate. He, and many others, believed the tradition blocked the 2003 property tax reform bill. When Lieutenant Governor Dewhurst was on his radio show, Patrick asked which of the Republican Senators did not support the bill. When Dewhurst hesitated, it confirmed Patrick's working theory that the rule allowed important issues to languish without so much as a list of supporters and opponents. He believed it allowed Senators to avoid controversial votes which played well in Austin but may be against the wishes of their constituents (Swartz, 2007).

During the 2007 rules debate, Senator Patrick noted that few states have such a significant hurdle to debate legislation. Of course, the United States Senate has a three-fifths vote that controls

¹⁴ <https://lrl.texas.gov/mobile/memberDisplay.cfm?memberID=67>

much of the debate. Supermajority votes are common among state governments, but generally only for specific purposes. Numerous states have extraordinary vote requirements to approve amendments to the constitution, expel a member from office, and override a Governor's veto (National, 2010). Additionally, 14 states have a supermajority threshold to approve a tax increase or create a new tax. A narrower subset have requirements for legislation that includes emergency spending or that exceeds preset revenue limitations. Only three states require a supermajority to pass the budget under normal circumstances (National, 2017).

Interestingly, the vast majority of state legislative bodies require supermajority approval to suspend rules of procedure. Generally, suspension of the rules only occurs in emergencies or extraordinary circumstances. The most common vote requirement is two-thirds (although they vary as to total membership or those present and voting). Only 16 state legislative chambers allow the body to suspend the rules with a simple majority vote and two require unanimous consent. No state surveyed indicated that it used the suspension of the rules as a regular practice or that a supermajority vote was required to bring even routine matters before the body (National, 2010).

4.1. Growing Support for Change

In 2009, the Senate's two-thirds tradition did indeed incite significant debate. However, the matter being discussed was a narrow exception to the rule and not the wholesale change that some wanted. Senator Tommy Williams sought to allow the body to debate legislation relating to voter identification using a simple majority vote. By his count, Senator Williams found hundreds of instances where the Senate circumvented the suspension of regular order. He specifically mentioned Lieutenant Governor Bill Hobby setting a special order for redistricting. Williams argued that some legislation, like voter identification and redistricting, was so partisan and intractable by nature that consensus was nearly impossible. By creating the ability for the entire Senate, called the Committee of the Whole Senate, to debate this specific issue, Williams argued that he was actually working to preserve the two-thirds tradition. Some took issue with this altering

of the rules. They argued that Governor Hobby was required by court order to pass a redistricting bill, giving his circumvention an air of legitimacy. Further, they believed this set the stage for every contentious issue to be addressed outside of the Senate's tradition (Senate, 2009).

William's research, which was not distributed publicly, was described as an expansive account of every instance in which the suspension of regular order of business was not the guiding principle. From the debate, many of the examples occurred during a special session where it is not typical to use a blocker bill since the agenda is limited by the Governor's call. There were also precedents of using the "House Bill Day" rule where the Senate follows the regular order of business on Wednesday or Thursday to pass bills that originated in the House. Williams also cited times where bills were taken up in regular order and passed with supermajorities (Ibid, 2009).

During the debate, Senator Rodney Ellis, a proponent of the tradition, stated he had also researched the issue thoroughly and thought the rule mirrored the United States Senate's cloture rule. However, he believed that no other state legislature had a comparable process. He stated that the rule came into effect in the late 1930's as a means for Lieutenant Governor Allan Shivers to increase his political power and over time the members used it to reaffirm their individual influence as well. By setting such a high threshold, Senators were able to join together and block measures they opposed or disapproved of for other reasons (Ibid, 2009).

The Senate eventually adopted this narrow exception nearly on party lines, one Republican was in opposition. The issue for which they made the exception, voter identification, did not pass that session, but the rule would be carried forward to the next. The one oppositional Republican explained that while he supported the concept of voter identification legislation, this effort was plainly partisan. He represented one of the most evenly divided districts in the state and ran on a platform of bipartisan cooperation (Ibid, 2009). Ironically, he would be defeated in a 2014 primary election by an opponent who supported changing the two-thirds tradition. While the Republicans supported the change nearly unanimously, only Senator Patrick made the case again to change the threshold to a simple majority vote (Ibid 2009).

In the 2011 session, the rules kept the exemption for voter identification legislation, but made no further significant change. However, it was the first floor fight where additional members signaled their interest in amending the Senate's rules, albeit in the Senate Journal and not via amendment or vote. Two newer members (one sophomore and one freshman) expressed support for lowering the threshold to three-fifths or a simple majority. Another Senator, who had served for nearly two decades, also expressed support for eliminating the practice altogether, though he voted against Patrick in 2007 (Senate, 2011).

Although 2013 saw its share of new Senators, there was still an insufficient number to support a change in the rules. Instead, they adopted the previous rules and removed the voter identification carve-out since the bill passed in 2011 (Senate, 2013).

The 2015 session was exceptional in many ways. The recent election brought a new slate of elected officials statewide and many new legislators to the statehouse. Senator Dan Patrick was elected to serve as the Lieutenant Governor after a hard fought primary campaign in which he fiercely advocated for a more conservative agenda. To accomplish this, he believed the Senate finally needed to change its rules. "It's up to the Senators, it's not the Lieutenant Governor's power to change that... What I will say to the Republicans is, I just ran statewide, this was a key issue. I believe it's the right thing to do to change to 19. And I would try to persuade them to strongly consider it and change the rules. At the end of the day, [the Senators] have to vote (Smith, 2013)."

In addition to the new presiding officer, many new Senators, including some who had no prior legislative experience, were also elected. While the rule change was ultimately supported by nearly all of the Republican Senators, it was not without prolonged debate. The Senator carrying the resolution stated he was an advocate of the two-thirds tradition his entire legislative career. While he believed it halted worrisome legislation in the past, and increased consensus building, he noted the number of times the Senate had recently circumvented the tradition. He stated that often when a priority bill failed to pass, either by not gaining sufficient votes or by filibuster, the Governor would require the legislature to return and take up the issue again in a special session. During the special session, he argued, the Governor dictates the agenda and thus the regular order

of business. He also noted that the rule was becoming a considerable issue in primary election races and that many of the first and second-term Senators (which comprised over forty percent of the total body) had recently campaigned on lowering the threshold (Senate, 2015). It was also an issue with political activists and the state party. Since at least 2008, the Republican Party's platform, approved at the state convention, included a plank opposing the use of a blocker bill as a means to conduct business.¹⁵

While the debate was contentious and partisan, the ultimate vote to lower the requirement for the motion to suspend the regular order of business did not fall exactly along party lines. One Republican Senator voted present and one Democratic Senator voted for the change. Since he did not speak on the resolution, and made no comments to reporters, the Republican Senator's intentions were unclear (Smith, 2015b). Three years later, he lost a primary challenge to an opponent endorsed by Lieutenant Governor Patrick (Formby, 2018). The lone Democrat in support did articulate his rationale on the Senate floor. He pointed to many of his own bills that stalled for numerous sessions because he could not get the required 21 votes, even with Democratic control of the chamber (Senate, 2015).

4.2. Explanations for Change

After many years and efforts, why was the 2015 session decisive in changing the two-thirds rule? The rapid change of the Senate helps explain, in part, how the support for a septuagenarian tradition shifted so rapidly. In one publication, political scientist Mark Jones asserted what he called the conservative drift of the Texas Senate. Using a Bayesian joint scaling method, he sought to chart the ideological shift in the Senate from 2011 to 2017. Jones used Senators serving in multiple sessions as guideposts to compare legislators who did not serve together (Jones, 2017b). While the pitfalls of ideal point measurement have been discussed, his article is helpful in

¹⁵ <https://www.texasgop.org/wp-content/uploads/2014/06/2014-Platform-Final.pdf>

examining the change in voting patterns during that time period, especially how Senators compared to their successors or predecessors.

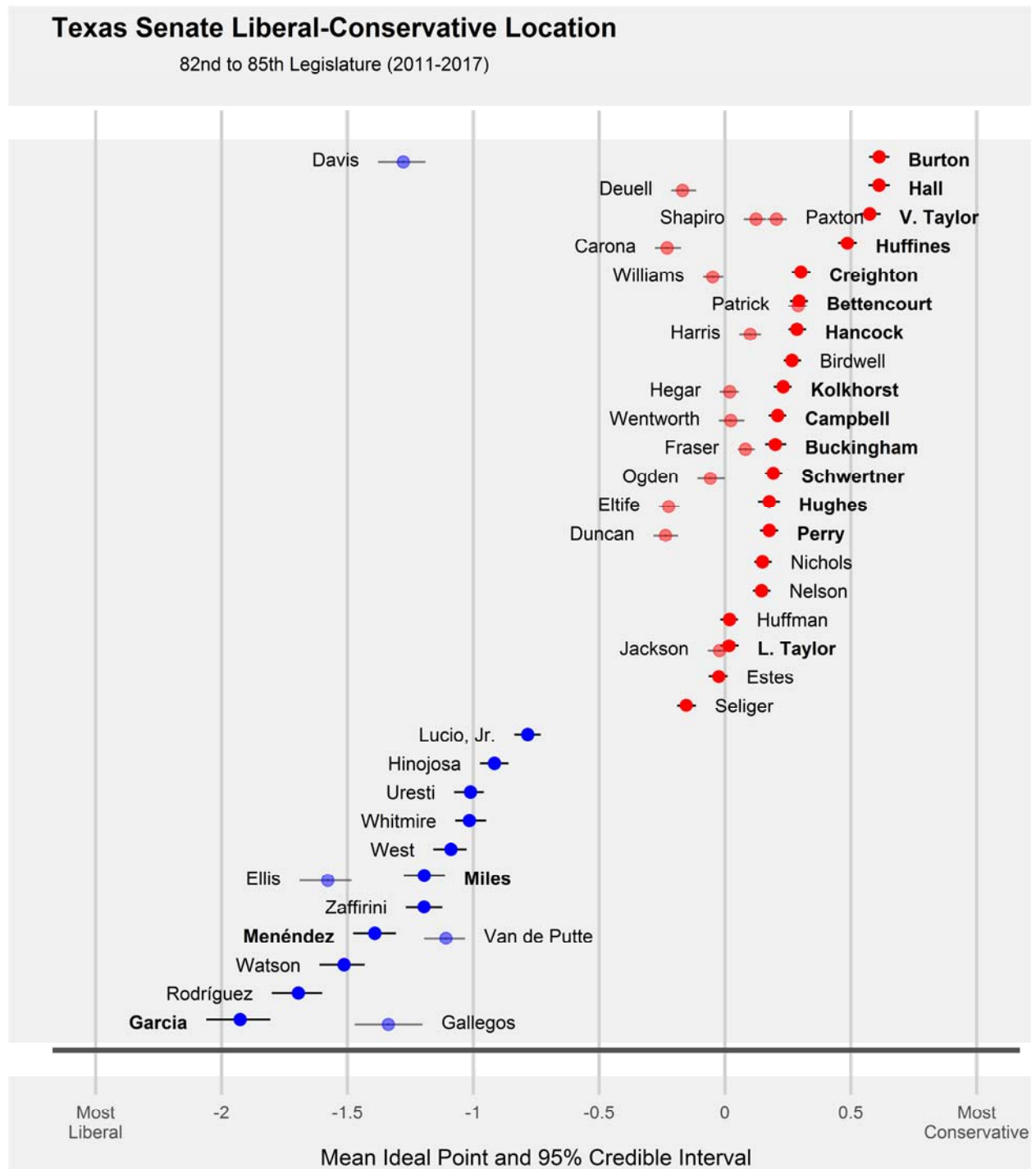


Figure 4.1: Rightward Drift of the Texas Senate (Jones, 2017b).

The results of Jones' analysis portend that the Senate has become more conservative since 2011 without a significant change in partisan affiliation. He claims that nearly every new Senator is more conservative than their predecessor (Ibid, 2017b). The most obvious of which is in Senate District 10 where the seat changed parties in the 2014 election. However, in many cases where the seat was held by the same party, the successor is considered significantly more conservative. Interestingly, the Democratic side of the ledger is a mixed bag with two of three new Senators considered more liberal than those they replaced.

Considering the lessons detailed in the literature review, the terminology Jones uses to explain the changing Senate appears tenuous. Using ideal point estimation as a stand-in for ideology and the disposition of the chamber, he argues that the transforming beliefs of the Senate left little room for centrist Republicans, reducing both their proportion and clout (Ibid, 2017b). His analysis and arguments have altered the perception of a Senator's voting history in districts across the state. In the 2014 primary election, Jones' rankings were used as a cudgel against a Northeast Texas Senator who was incorrectly labeled by political activists as the most liberal Republican in the chamber (Emanuelson, 2014). He was actually the fifth, but the damage was done.¹⁶ While he held a significant lead in the primary election (nearly 10%), he failed to clear a majority threshold, and eventually, he lost the runoff election by 300 votes or 0.83%.¹⁷ History nearly repeated as an incumbent West Texas Senator was forced into a runoff in part due to his opponents' accusations that he was out of touch with the district. Again citing the Jones analysis, the challenger accused the incumbent of being the most liberal Republican in the chamber and voting against a number of Lieutenant Governor Patrick's priorities (Stein, 2018). The incumbent Senator eventually prevailed, but the uncontextualized claims likely had some effect on the race.

Some may not agree with the label of liberal and conservative affixed to each end of the spectrum, but there is no doubt that the new Senators have substantially different voting patterns than their predecessors. While Patrick made the rule a central issue beginning in 2007, few new

¹⁶ <https://www.texastribune.org/2013/11/26/guest-column-2013-senate-left-right/>

¹⁷ http://elections.sos.state.tx.us/elchist173_state.htm

Republican senators were elected in the intervening years. That changed in 2013 when four new Republican Senators were sworn into office, three of whom had prior legislative experience in the House of Representatives (although one served for only a session). The following year, three new Republicans were elected, all from the House of Representatives. Finally, in 2015, five freshman Republican Senators were elected. They were notable for their lack of legislative experience. Of those: one served previously in the House, another was the Tax Assessor-Collector of the largest county in the state, one was a political grassroots organizer, and the remaining two spent their lives in private business.

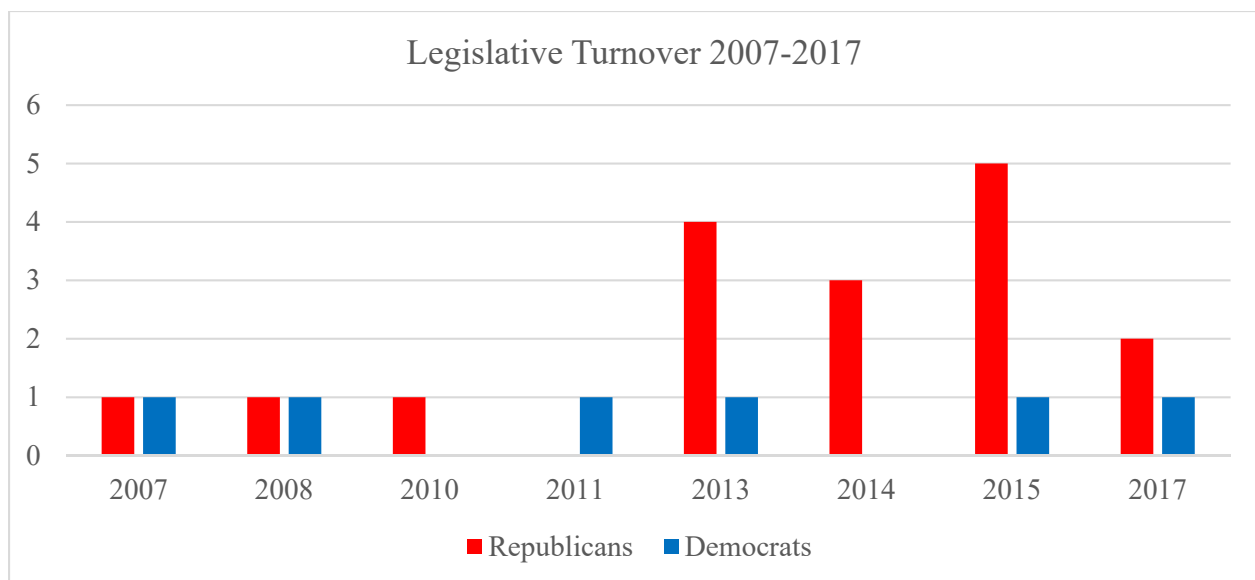


Figure 4.2: Legislative Turnover 2007-2017

The argument can be made that new members are less institutionalized than their more senior colleagues; they have fewer ties to the organization itself and its traditional means of operation. This could make them more inclined to support a significant change in tradition. It is also possible that the new Senators who previously served in the House witnessed the Senate's inability to pass specific priority legislation outside of a special session. This could lead a movement-conservative oriented member to support lowering the required vote.

The simplest explanation for the rule change, and the chosen new threshold, is that it nearly matched the guaranteed partisan makeup of the chamber. Assuming there was not sufficient support for a simple majority suspension vote, then three-fifths was the next alternative that could be achieved with only Republican legislators. While the number of Republican held seats in the Texas Senate has certainly grown in past decades, in two successive redistricting cycles the number has not increased. The districts are so consistent that only one seat has switched between the parties in the last 14 years. This would mean that 19 or 20 seats is the ceiling for districts that can be drawn to reliably elect a Republican Senator.

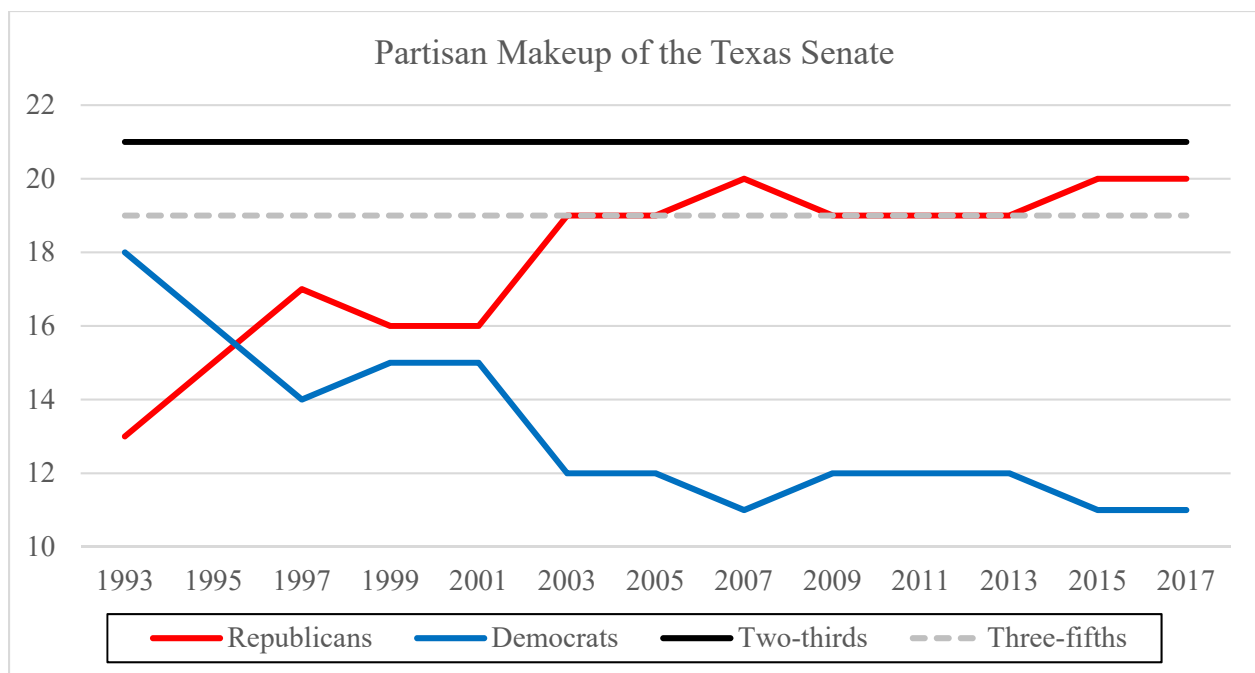


Figure 4.3: Partisan Makeup of the Texas Senate

Another possible explanation for the rule change is that because the Republican caucus in the Senate became more homogenous in its voting and ideology, especially after significant turnover, it favored changes to the rules that allow the presiding officer greater autonomy in setting the agenda (Schickler, 2000). Previous research showed that if a majority in a legislative body held a roughly similar view on policy, it was more likely to cede authority to leadership. In his work,

Schickler took a slightly different course, explaining that the makeup of the floor and the median member played a greater role than just the composition of the party in power. Because the median legislator in the chamber moves closer to the median member of the party in power, the legislator is more likely to support such a rule change. Since rules are decided on a majority basis, the result will suit the majority of the body, not the supermajority needed to bring forward a bill for debate (Ibid, 2000).

One final explanation for the rule change contends that due to overreach by the minority party, the majority party reigned in obstruction via the rules. Typically those in the minority, seeking to avoid a majority-initiated rule change, do not overuse any ability to hinder proceedings favored by those in power. From the history of the United States Senate, the rules on cloture and filibuster were those preferred by a majority of members (as the rules predating 1975 allowed a simple majority to amend the threshold). Any disproportionate influence of the minority party could be thwarted by the majority threatening a rule change. It was only the intractability of certain issues that led to cloture reform (Binder, 2007). Applying this concept to the Texas Senate, it is possible that a combination of successive obstructions by the minority party and a shifting makeup of the body led to the rule change.

4.3. Politics or Principle in the Two-Thirds Tradition

In the book *Politics or Principle? Filibustering in the United State Senate*, Binder and Smith discussed whether Senators supported the filibuster or cloture on principled grounds. They found the vast majority of Senators did not vote to dependably support unlimited debate or the will of the majority, but rather voted in a manner consistent with how they viewed the underlying policy matter (Binder, 1996).

This research does not always provide a simple comparison to the Texas Senate's two-thirds tradition. Texas State Senators still have the ability to filibuster or discuss a bill for as long as they are willing and able. The two-thirds vote was ultimately always on the merits of the

underlying policy. This may have been an easier proposition when the Senate was more collegial and composed entirely of one party. However, there are an indiscernible number of bills that members oppose but still vote affirmatively to suspend the regular order. While the official vote is the only way to post hoc evaluate preferences, there are a number of examples in which a Senator supported the suspension of regular order but ultimately voted against the bill on second or third reading. This could be an instance of logrolling where indifference to one bill could be used to gain support for another.

There are also examples of Senators who voted to suspend the regular order consistently in the subset of bills whose vote fell between three-fifths and two-thirds. As will be discussed in the next chapter, this cannot be viewed as support for the suspension of the regular order, but their approval of the underlying issue. Alternatively, Senators who consistently voted against suspending the regular order do not have a principled opposition to the practice, they oppose the specific legislation being brought forward for debate.

4.4. Little Harm Thesis

One consistent topic in the biennial rules debates was whether the two-thirds tradition actively hindered legislation important to the state. As discussed in the literature review section, Binder and Smith sought to test the “little harm thesis”, the theory that the super majoritarian requirement for cloture did not inhibit critical legislation from passage. And if the cloture threshold did hinder legislation, it was likely not worthy or necessary. They were skeptical of this claim, but found it difficult to disprove (Ibid, 1996). The same question can be asked of the Texas Senate. It is common practice that the Chair recognizes a Senator to suspend the regular order of business only when the Senator has sufficient support to do so. For that reason, it is difficult to ascertain which bills had the support of a majority of the Senate but lacked the supermajority needed for suspension of the regular order of business, outside of the handful of bills that fail once brought up for debate.

An alternative way to test the little-harm thesis would be to analyze legislation prioritized by leadership that failed to pass. The Speaker of the House and the Lieutenant Governor have historically reserved low-numbered bills for the priorities of their respective chambers. Those priority bills are authored by a Senator or Representative, but they have also been deemed important by the presiding officer. This is not an attempt to determine the quality of the bills in question, but which were priorities to the legislative leaders at the time. The quantity of low-numbered bills varies, ranging from 12 to 30 in the 2007-2017 legislative sessions. Whether the bill passed through the Senate is the most relevant indicator as to whether the two-thirds tradition, 2007-2013 in this series, hindered important bills relative to the 2015 and 2017 sessions. As a means of comparison, the Senate leadership's priority bills are contrasted with the House's for the same session. However, there are examples where these numbers do not tell the full story. For example, it is tradition for the state budget to switch originating chambers each session even though both file it under a low bill number. There are other examples where a similar policy change eventually passed under a different bill number.

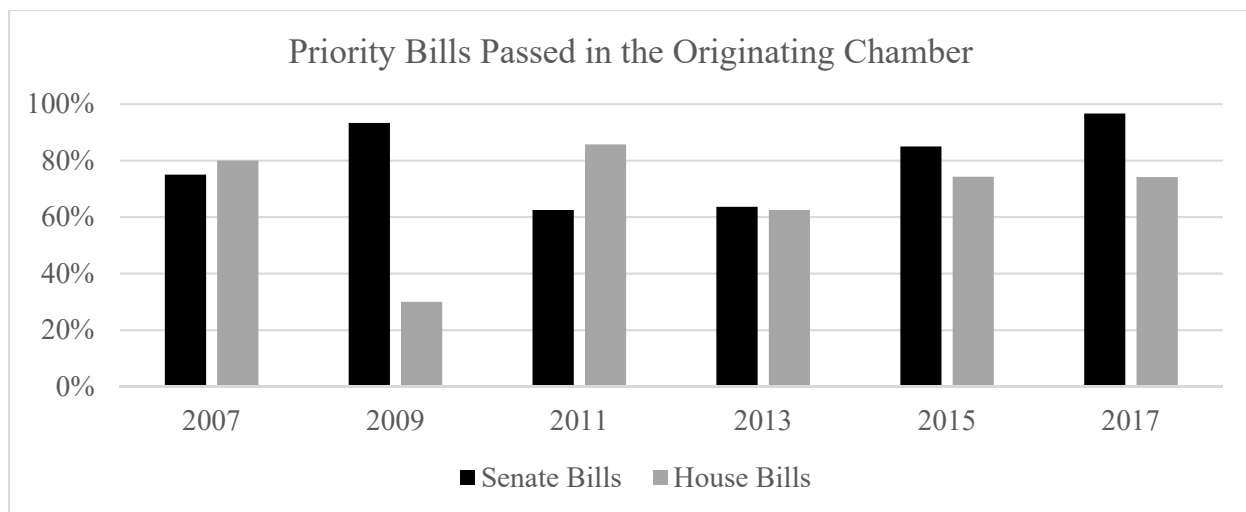


Figure 4.4: Priority Bills Passed in the Originating Chamber

The percentage of priority bills gaining passage in the Senate increased in the two sessions following the rule change compared to the previous two. This could be due to the lowered

threshold, but it may also be a result of Lieutenant Governor Patrick's success in shepherding the legislation important to him. Over the entire time period, the results are mixed, but the two chambers are relatively comparable (2009 excluded). Although, the Senate does have slightly better success in passing their own priority bills compared to the House. This lends credence to the argument that the two-thirds rule did not hinder significant legislation from progressing. However, this could also be an example of confirmation bias where leadership declined giving a low bill number to legislation that stood little chance of clearing the suspension threshold. The type of legislation deemed a priority could have also changed with the presiding officers in 2015.

Binder and Smith also debated whether the filibuster kept important legislation from becoming law. A subset of the priority bills that made it through their originating chambers eventually became law. If that percentage was higher following the rule change, then it is possible the threshold was an obstacle. Of course, numerous other factors can influence whether a bill completes the entire legislative process, not just its merit or support from leadership. The House was more successful in ushering its priority bills into law with the exception of 2017. Because 2015 and 2017 are the target years following the rule change, the results are inconclusive.

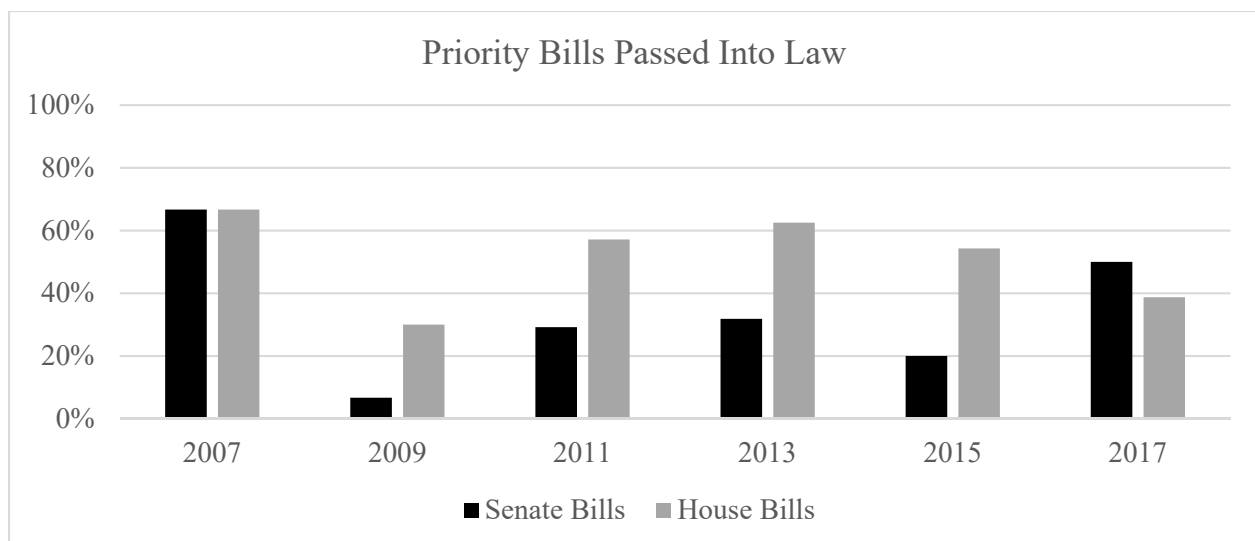


Figure 4.5: Priority Bills Passed into Law

Chapter 5: Pivotal Analysis and Discussion

Early in the 2017 session, the Senate once again adopted their permanent rules of operation. Two years removed from the historic change, Senators from both sides were eager to debate its significance. The Senator in charge of the debate, the Republican chair of the Administration Committee, stated that the change amounted to less than three percent of the legislation debated and approved by the Senate. He further argued that there was no pattern associated with the bills passed under the lower threshold and the change benefited the chamber equally; there was no correlation in party, partisanship, region, or member. Some Democrats in the Senate were still skeptical of the need for this change and discussed whether it benefited the institution. When a Democratic Senator offered an amendment to revert back to the two-thirds requirement for suspension, it failed along party lines. Notably, the lone Democratic supporter of the rule change, and the Republican abstainer, switched their votes to align with their party (Senate, 2017).

5.1. Research Methodology

While numerous bills advance every session, with many record votes on those bills and amendments to the bills, the vast majority would have passed with the two-thirds vote threshold. To determine the effect of the rule change, the legislation that would not pass but for the new lower threshold must be separated from those with a two-thirds, or greater, affirmative vote. To do this, I examined the entire Senate Journal from the 84th and 85th legislative sessions, searched for any vote to suspend the regular order of business on second and third reading, and calculated the vote percentages for and against. Assuming all 31 Senators were present, this would mean any vote of 19 (three-fifths) or 20 to suspend the regular order. If there were fewer than 31 Senators present, the vote required is lowered accordingly. The rules set forth a minimum threshold meaning there is no ability to round up to get to the required vote percentage.

The requirement that bills be read on three several days is a long-standing tradition and one of the few dictated by the Texas Constitution.¹⁸ Reading of course is a loose term which usually requires a clerk to announce the bill number, author, and caption of the legislation. First reading occurs when the bill is filed, read aloud to the chamber, and referred to a committee by the President of the Senate. Once a committee has approved the bill, it is put on the intent or local and uncontested calendar, brought up outside the regular order, and read for a second time. This is the first opportunity for the entire body to debate the legislation. Following that, third reading is supposed to occur on the next legislative day. This is usually perfunctory as the rules require a two-thirds supermajority to approve any amendments on third reading (as opposed to a simple majority on second).¹⁹ The Senate has a practice of taking up third reading directly after second reading, suspending the constitutional requirement and speeding up the process. If a bill does not have the required four-fifths approval to suspend the constitutional requirement, it is taken up the following day. Because this provision is in the Constitution, it still requires an affirmative supermajority vote independent of the lower threshold to suspend the regular order. There are numerous steps between each process detailed above, but those processes are the most relevant to the following analysis.

While minute, the distinction between second and third reading is important. The additional reading allows members and advocates another opportunity to address concerns with proposed legislation. At times, these concerns arise from amendments or changes from the previous reading. They also serve different legislative purposes, as noted above, and tradition requires that each reading include a motion to suspend the regular order. In some cases, this yields different vote totals for the motion on second and third reading. Under the rules, the legislation would not have progressed if it could not reach the required level of support on either reading. For that reason, second and third reading are treated similarly and a vote total below two-thirds on either is included in the analysis. There were also instances where the vote dipped below two-thirds due to an

¹⁸ Texas Constitution, Article 3, Section 32

¹⁹ Texas Senate Rules, Rule 7.19

absence. For consistency, and to avoid additional assumptions, the bills that but for an absence may have reached the original vote threshold are included.

5.2. Research Results

Examining the Senate journals from 2015 and 2017 yielded 36 and 38 bills respectively that passed under the lower threshold. In 2015, of those 36 bills, 69.44% were authored or sponsored by Republicans and 30.56% were carried by Democrats. This is similar to the partisan makeup of the Senate at the time, 64.52% Republican and 35.48% Democratic. The results from 2017 were more unbalanced, given the same partisan makeup, yielding 76.32% of bills authored or sponsored by Republicans and 23.68% from Democrats.

Aside from the partisan differences, there are no other obvious patterns in the authors of those bills. In 2015, 21 of the 31 Senators passed bills under the lower threshold and no Senator had more than four bills on the list. Similarly, in 2017, 21 Senators had no more than three bills each. Of the members who did not author any bills in the subset, in 2015, there were seven Republicans and three Democrats. In 2017, those numbers nearly flipped with four Republicans and six Democrats without bills in the subset. The split in 2015 aligns more closely with the partisan makeup of the chamber. There are no significant discrepancies in regionality or other notable metrics.

The numbers conceal two notable distinctions. First, the bills authored by Republicans were generally heard earlier than their Democratic counterparts. All things being equal, the quicker a bill proceeds through the system, the greater likelihood of its final passage. The legislative process is labyrinthine and it is designed to stop prospective bills, rather than to allow their advancement. The House and Senate rules, along with the Texas Constitution, have built-in deadlines for many steps in the legislative process. These deadlines are difficult to suspend, especially in the House which traditionally adheres closer to its own rules.

Compared to the House, there are fewer deadlines guiding the Senate. This is likely due to the smaller size of the chamber which allows it to operate in a nimbler manner. This also adds difficulty in determining what is too late in the legislative process. Technically, a Senate bill must be received by the House on the 130th legislative day, to be voted out of the House committee on the 131st, so that it can be set on the last calendar on the 134th day.²⁰ This is only if everything goes as planned throughout. In the Senate, with its relaxed rules, bills must be reported from committee at least 72 hours before the end of the legislative session.²¹ Practically, most bills must be considered much earlier to make it through the entire process. For purposes of this research, the bills were separated equally; the first half that were passed under the lower threshold, or the earlier half, and the second half. Also, only bills that originated in the Senate were included since House bills are heard later in the session.

In 2015, the Democratic bills were well distributed in the earlier and latter half, 44.44% and 55.56% respectively. The same was true of Republican bills with 52.38% and 47.62% respectively. Because we are discussing proportions, there are a larger number of Republican bills in each category, as there are more in the subset that passed under the lower threshold. In the 2017 session, Democratic bills were heard later in the process, 14.29% in the first half and 85.71% in the second. This is compared to 60% of Republican bills that were located in the earlier portion and 40% later. Once again, the first and latter half markers are not scientific, but are intended to show which bills had a greater likelihood of becoming law. In the 2015 subset, 80% of the Senate bills that passed into law were in the earlier set and 20% were in the latter. The 2017 session was less clear-cut with 60% of the bills that passed located in the first half and 40% in the second. Also, fewer bills made it through the entire process. In summation, Republican bills were heard earlier in the process, and thus, stood a greater chance of passage.

While avoiding a subjective viewing of the content of legislation in the subset, many of the Republican authored bills were priorities of the leadership and the Republican Party of Texas. In

²⁰ <https://lrl.texas.gov/scanned/calendars/2017calendar.pdf>

²¹ Texas Senate Rules, Rule 7.24 (b)

2015, bills that passed under the lower threshold included creating education savings accounts, lowering the state's spending limit, reaffirming Texas' 10th amendment rights, allowing concealed carry on college campuses, and permitting individuals to openly carry handguns. The same could be inferred in 2017, when the Republican subset of bills included party priorities such as legislation banning sanctuary cities, limiting property tax, advocating for the repeal of the Affordable Care Act, and eliminating certain automatic public sector union due deductions.

The bills authored by Democrats must be less partisan. Because they have fewer members, Democrat's bills need at least some Republican support (40% of that caucus if the Democrats are unanimous) for their legislation to proceed. Under the three-fifths threshold, the Republicans only need 95% of their own caucus to suspend the regular order. In fact, there were examples where an even lower amount was required as the legislation had some Democratic support. Of the 25 Republican bills from the subset in 2015, six, or nearly a quarter, had at least one affirmative vote from a Democratic Senator. In 2017, six of the 29 Republican bills (about 20%) had some Democratic support.

The ultimate effect of the rule revision is the legislation that became law which would not have the required support prior to the change in 2015. The chart below details the progress of the subset of bills passed following the rule change. Fewer bills passed overall in 2017, and the House bottled up significantly more legislation that originated in the Senate. In total, 21 bills became law using the lower threshold (15 in 2015 and six in 2017). This is an exceptionally small minority of the 1,430 bills, joint resolutions, and concurrent resolutions that passed in 2015 and the 1,317 in the 2017 session (about 1% and half a percent, respectively).²² In a later chapter, some of these bills will be further examined to discuss the legal and practical effect of the rule change, especially as it altered local land use planning.

²² <https://lrl.texas.gov/sessions/sessionSnapshot.cfm?legSession=84-0> and <https://lrl.texas.gov/sessions/sessionSnapshot.cfm?legSession=85-0>

	2015	2015	2017	2017
Stalled in the Senate	2	6%	0	0%
Stalled in the House	17	47%	27	71%
Stalled in Conference	1	3%	2	5%
Vetoed	1	3%	3	8%
Passed	15	42%	6	16%
Total	36	100%	38	100%

Figure 5.1: Progress of Bills in the Lower Threshold Subset

One constitutional amendment passed in the 2017 session using the lower threshold. The Constitution requires that any amendments to its text be finally approved by two-thirds of the entire membership of the body.²³ The motion to suspend the regular order was only approved by 20 of the 31 members, one vote short of the requirement for passage. On second reading, the resolution was approved by the same 20 members. Then on third reading, it gained one Democratic supporter, meeting the requirement for passage. There is no notation in the journal that explains the change in vote.

This kind of vote trading is not uncommon; in fact, it is quite commonplace for a member to vote to suspend the regular order of business, and then, vote against the bill on second or third reading. Since the overt reasons for these switches are rarely explained, on the floor or in the journal, the rationale is usually not publicly known. In 2015, Senate Bill 4 would have created a tax credit, to be used as a scholarship, so that a student may attend the private school of their choice. Commonly referred to as a voucher or school choice, this legislation has been a Republican priority for many sessions. The bill received the minimum number of votes to suspend the regular order, but it lost a Republican member on final passage. While the Senator stated in the journal that the bill did not go far enough, the Senator clearly did not want to impede its passage.²⁴ That session, another party priority, limiting municipal annexation, saw three Senators (one Republican and two Democrats) switch their votes. Both the suspension and final passage votes resulted in the

²³ Texas Constitution, Article 17, Section 1.

²⁴ <https://journals.senate.texas.gov/sjrn/84r/pdf/84RSJ04-20-F.PDF#page=27>

bare minimum required with significant vote changing in-between. A likely example of logrolling was Senate Bill 2063 in 2015. Four Senators switched their votes from suspension to passage. The author of that bill was the lone Democratic supporter of the rule change and was often considered an apostate to his party by supporting Republican legislation. Similarly, in 2017, two Republican Senators switched their votes on a bill relating to food allergy awareness in restaurants, carried by that same Democratic Senator, allowing it to progress.

As mentioned in the introduction, the *Texas Tribune* published an analysis in the closing weeks of the 2015 session that suggested the rule change was important but not as significant as the opponents may have argued (Batheja, 2015). The article noted that the change allowed for a small number of Republican priorities to move through the legislative process when they would have ordinarily not had necessary support to suspend the regular order. The author of the rule change stated that even though some legislation passed using the lower threshold, it is impossible to know if the bill would have eventually gained the two-thirds needed to pass in previous sessions. Some Democrats stated that the change had caused additional strain and strife within the body, eroding trust between the two parties. Lieutenant Governor Patrick seemed content with the effect of the rule change. "The 19-vote rule has allowed Republicans, the majority party, to pass legislation that has been blocked for many years ... At the same time nearly 95% of legislation has passed with bi-partisan support (Ibid, 2015)."

5.3. Pivotal Members in the Texas Senate

Now that the subset of bills has been thoroughly dissected, that same data can be used to determine which members are pivotal in the passage of those bills. But before entering into the pivotal analysis of the bills that passed under the lower threshold, it is helpful to return briefly to Krehbiel's thesis. Decision makers are utility maximizers, and they vote as such when they believe a policy change improves upon the status quo. The state of play occurs when the median pivot acts followed by the filibuster pivot (rule pivot in the Texas example) and then the veto override pivot

(Krehbiel, 2010). By changing the spatial location of the rule pivot, the Senate fundamentally changed the decision-making process of the entire body. Time and resource constraints require that only those whose votes can be most easily obtained are pursued (Ibid, 2010). In changing the decision locus, the calculus of not only who to court, but how they are courted (concessions made, votes traded, etc.) was altered. The below graphics build a foundation for how to best view that shift in the pivotal players.

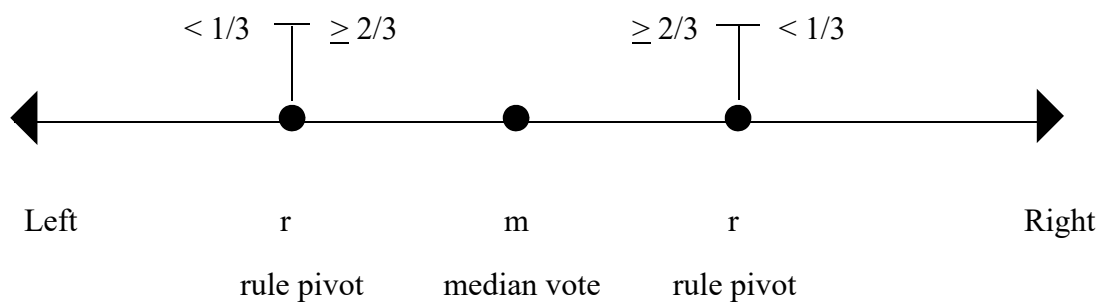


Figure 5.2: Pivotal Legislators Under the Two-Thirds Rule Suspension

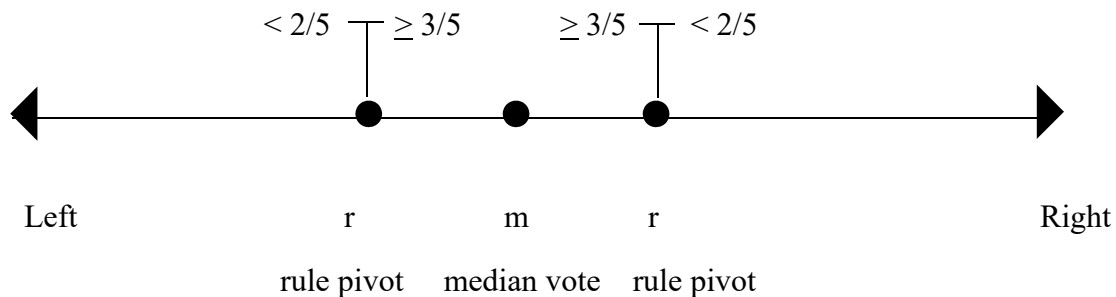


Figure 5.3: Pivotal Legislators Under the Three-Fifths Rule Suspension

To determine the pivotal members, the 36 votes in 2015 and 38 in 2017 were entered into a spreadsheet with each vote coded either as a “1” or “0” for each Senator. The 1 code means the member voted in favor of the bill and the 0 represented a no vote. A “-” was used to signify either an absence or a vote of present. There is not a significant difference between a 0 or a -, but they

distinguish between a no vote and more passive options that did not actively move the bill forward. In the calculation, absences were treated the same as a no vote since neither help progress legislation. While a Senator may have otherwise supported the legislation but for an absence, to limit assumptions, only overt yes votes were included. Finally, the votes are organized by district number to anonymize the specific legislator.

The goal of this analysis is not to debate the character or quality of the legislation in question, but rather, to determine who is important in the bill's progress, and more broadly, who is pivotal in the Senate. For that reason, a 1 represents a single vote to move forward the legislation as a means of aggregation. After the total yes votes are calculated, the pivotal score is determined by dividing that sum by the total universe of bills. The pivotal score describes the proportion in which a Senator was on the winning side of a motion to suspend the regular order of business for the bills in the subset (between three-fifths and two-thirds of those present and voting).

The following page shows the results from 2015. The markers are noted by district number and the red or blue denotes party affiliation, Republican and Democrat respectively. The solid gray line represents the original Rule Pivot, the 21st vote or two-thirds of the body. The solid black line similarly represents the new Rule Pivot at 19 or a three-fifths vote. These lines should not be seen as finite, because absences can reduce the threshold to suspend the regular order. However, they are helpful in visualizing which Senator is most likely to be pivotal in the passage of bills originating from each side of the spectrum.

Notably, the Republican members all have significantly higher pivotal scores than their Democratic colleagues. There is a 17% difference between the least pivotal Republican and the most pivotal Democrat. This is due to a greater number of bills in the subset authored by Republican Senators, many of which had votes that fell along party lines. Also, the Democratic Senators have slightly greater homogeneity than their Republican colleagues. There is a 22% gap between the most and least pivotal Democrat (if the most pivotal Democrat is excluded, there is only an 11% difference). There is a 25% difference between the two Republican extremes and the

members are well distributed between the two. The Republican caucus is larger, so a greater distribution is not unexpected.

The preceding page shows the Jones Bayesian ideal point estimation of the 84th Legislature in the same format as the pivotal analysis. The results of both are noticeably similar. In fact, they have a correlation of 85.87%. This is not surprising because the votes in the pivotal analysis, those that passed under the lower threshold, are a segment of those used by Jones in his analysis (all nonlopsided votes during the session). The argument could be made that the pivotal analysis is misleading, since it is a narrow sample of the total bills considered by the legislature. While this is true, these votes are some of the most consequential of the session. This is also why this section will compare the pivotal score to Jones' liberal-conservative calculation. By analyzing all nonlopsided votes, Jones uses many more votes (including those used to determine the pivotal score). While it is impossible to determine which is more accurate, the correlation between the two articulates the similarities.

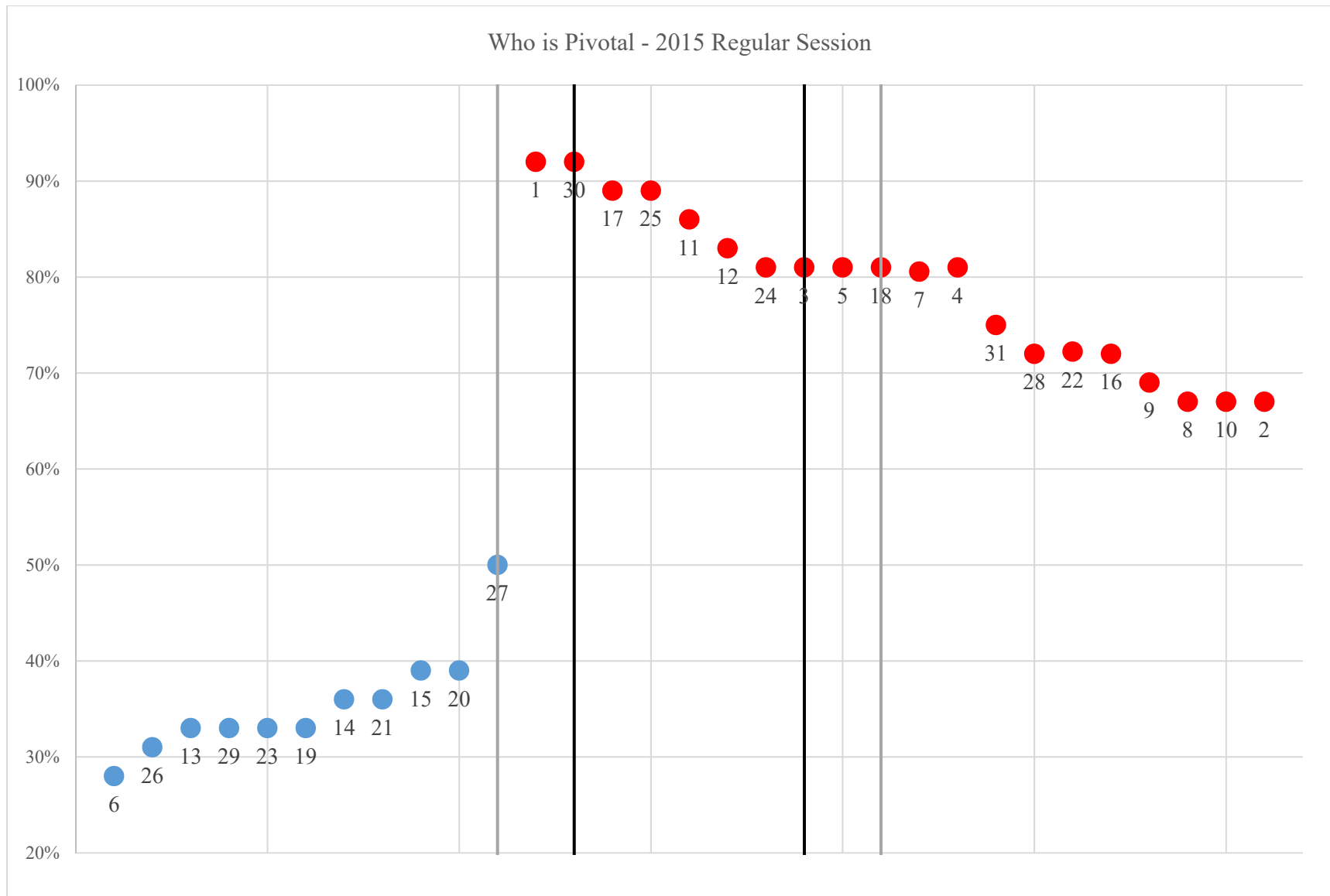


Figure 5.4: Pivotal Scores – 2015 Regular Session

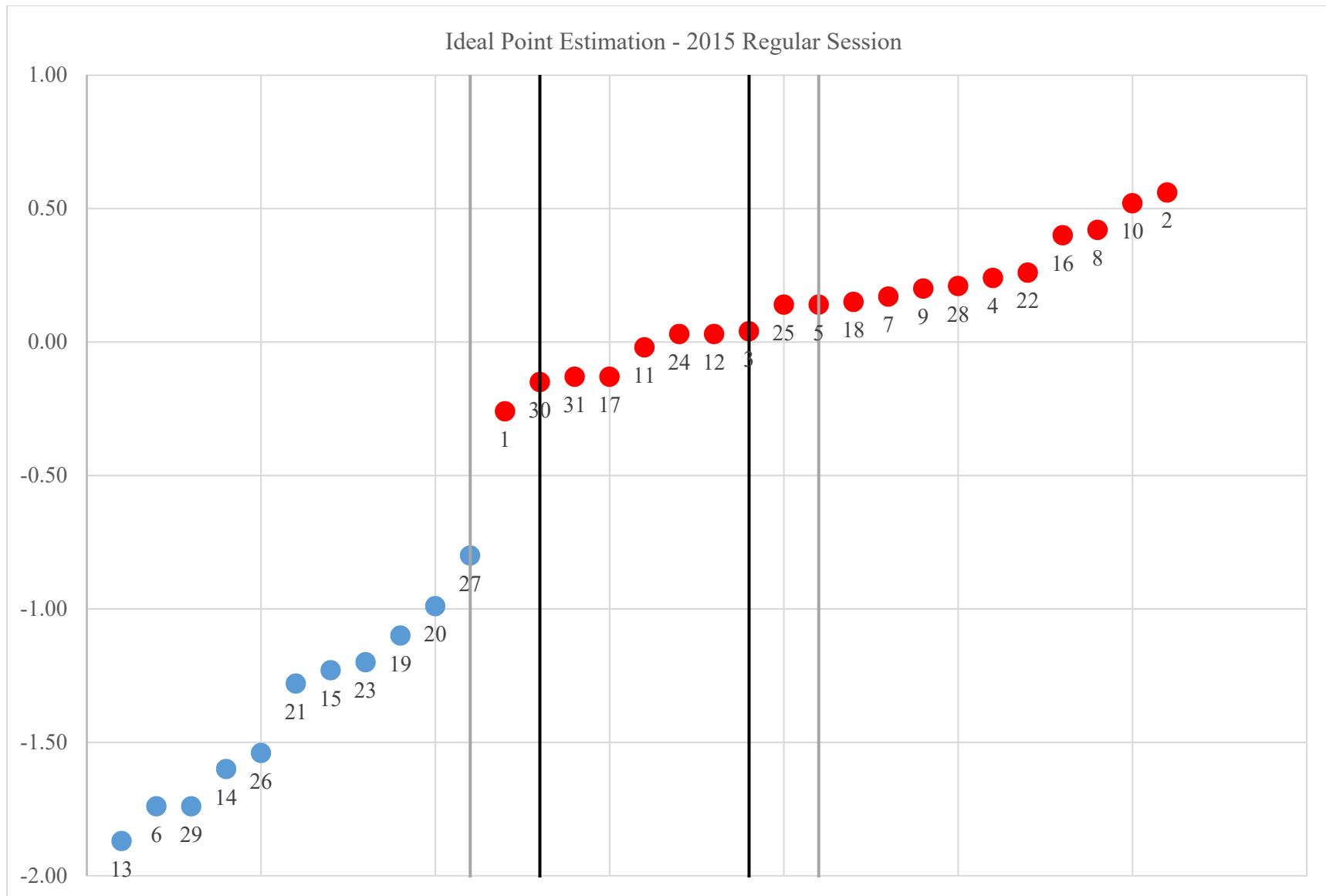


Figure 5.5: Ideal Point Estimation – 2015 Regular Session (Jones, 2015)

The results from 2017 show a greater partisan split with more Republican authored bills in the subset. The difference between the least pivotal Republican and the most pivotal Democrat is 34%. The homogeneity holds in this session with a gap of 29% between the Republican Senators and a smaller difference of 11% in the Democrats. The results have a similar correlation with the Jones Bayesian ideal point estimation of 84.05%. While the differences between the two parties are starker in 2017, the pivotal players are similar.

In examining the results from both legislative sessions, lowering the rule's threshold clearly had an effect on the position of the pivotal players in the Senate. But it was more consequential for bills originating from the Republican side of the spectrum. Because the Democrats are the minority party of the chamber, their bills need significant Republican support for passage (25% of the Republican caucus), three-fifths (40%), and a two-thirds vote (50%). In looking at the pivotal scores and Bayesian analysis from 2015, the difference between the 19th and 21st Senator for bills emerging from the Democratic side is relatively minor. The pivotal scores are the same, and the Bayesian scores are slightly greater than 4% of the spectrum (the difference between the two points divided by the total distance between the two extremes). The 2017 session yields similar results, with a 5% difference in the pivotal scores and less than 1% of the Jones spectrum.

For legislation emerging from the Republican side of the chamber, the results are divergent. The change from two-thirds to three-fifths meant that legislation only required support from 95% of the Republican caucus and 0% of the Democratic caucus for passage. In practice, this was not always the case as numerous bills gained some Democratic support and Republican disapproval. For those bills from the Republican side, between the 19th and 21st Senator, there was a 42% difference in pivotal scores and a 26.75% difference in the Jones analysis in the 2015 session. The 2017 session tells a similar story with a 58% difference in pivotal scores and a 21.68% difference in Bayesian scores.

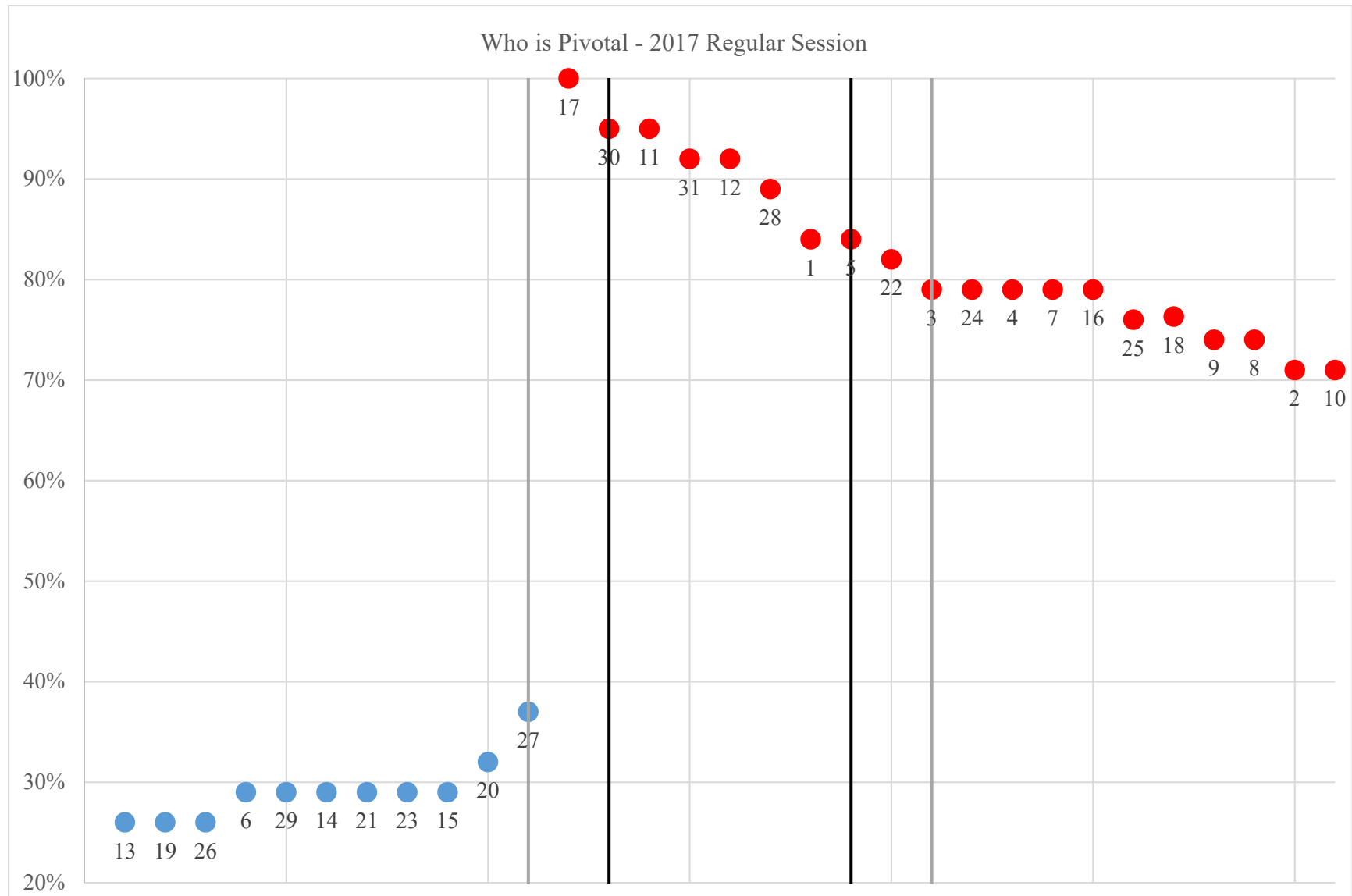


Figure 5.6: Pivotal Scores – 2017 Regular Session

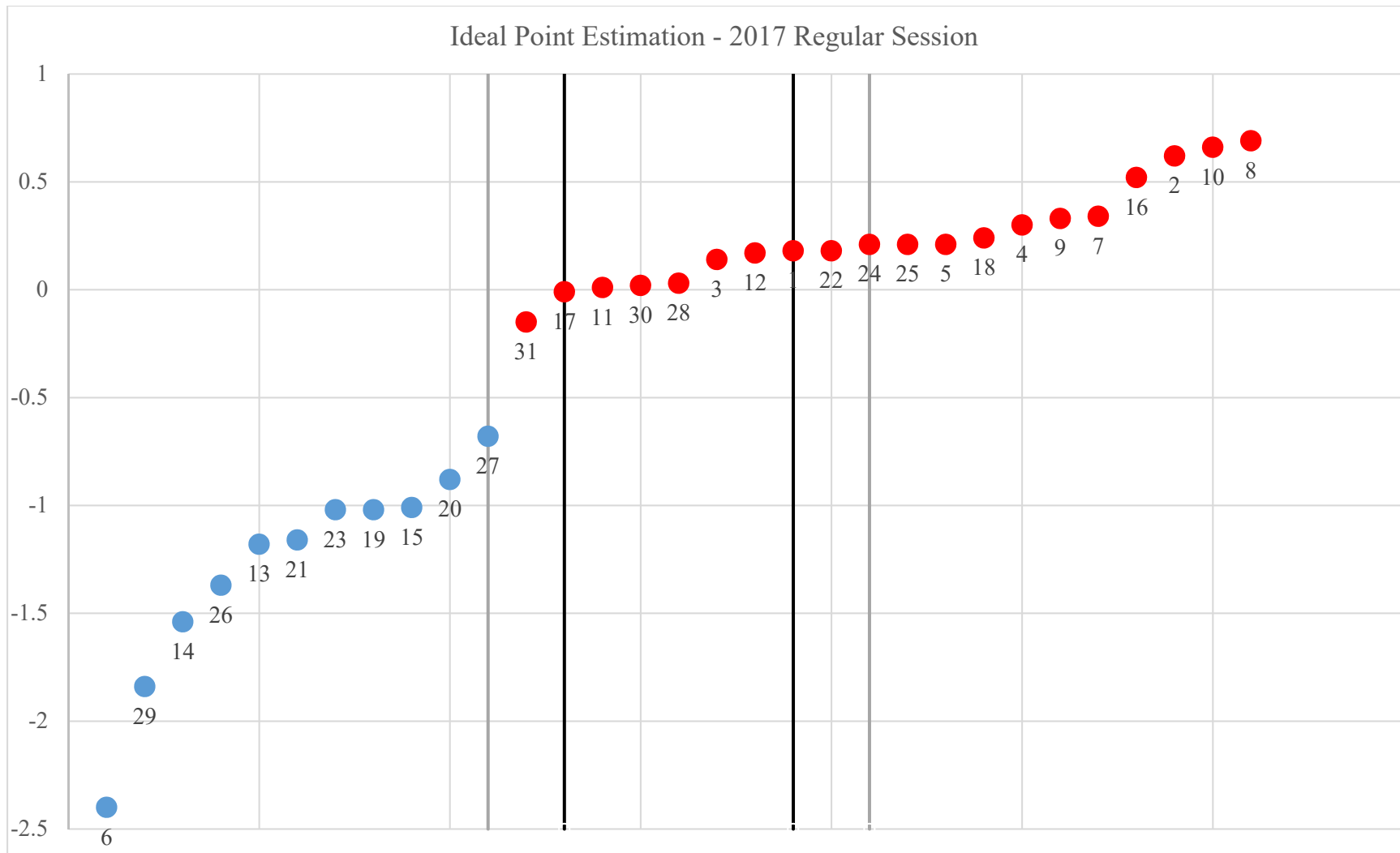


Figure 5.7: Ideal Point Estimation – 2017 Regular Session (Jones, 2017a)

Chapter 6: Effects on Local Planning and Policy

In previous chapters, the content of legislation has been mostly avoided as a means to discuss the theory of political decision-making. But explaining the passage of new law without the examining the practical effects of those policies is a barren exercise. Amending the minimum threshold to bring a bill forward for consideration changed the operation of the Senate, and it led to changes in law that would most likely not have occurred but for that amendment. Some of those bills related to how local entities engage in land use planning. This was especially true in the 2017 special called session where the state closely examined many practices of local government including annexation, permitting, and heritage tree ordinances. In studying specific proposed changes in law, the effect of the rule change should come into greater focus.

6.1. Local Land Use Planning in Texas

Texas law gives various powers and duties to each political subdivision of the state. This authority varies widely depending on the entity's size and style of incorporation. Counties are "general purpose" entities because they are required to perform numerous functions including infrastructure, criminal justice, law enforcement, and health and safety monitoring (Texas Municipal, 2017). The state creates special purpose districts, also called single-purpose, that perform a specific task such as managing utilities, health care, and economic development. City governments have a larger breadth of responsibilities, but vary greatly in their jurisdiction. General law cities differ in governance style and administration and only have powers explicitly authorized by the state. In contrast, home rule cities have the ability to perform any action that is not explicitly prohibited in the

Constitution or state statute. To obtain home rule status, a city must have at least 5,000 inhabitants, and it must adopt a city charter (Ibid, 2017).

Home rule cities are given broad authority for self-governance that constitutes a public purpose. This includes, not only which activities they undertake, but also, the structure and decision-making authority of their government, such as mayoral and city council terms, compensation, and size. There are limitations on their power such as their ability to raise revenue. While municipalities exercise many “inherent powers,” rights derived from their status as home rule cities, they also have broad authority to ensure the general welfare of their territory. These “police powers” include zoning and planning ordinances to establish health and safety and appropriately plan for growth. City councils can adopt comprehensive plans and create planning departments to maintain those proposals. Municipalities also create and enforce ordinances regarding development in their boundaries and extraterritorial jurisdiction (Ibid, 2017).

In contrast, counties have little power and authority regarding land use planning. Like general law cities, counties only have authority for those actions expressly allowed by the legislature. While the legislature briefly authorized county home rule authority in 1933, it was repealed in 1969, before any county adopted a charter. This was likely a result of conflicting language between that constitutional amendment and the existing provisions delegating powers to counties. Texas is the only state that prohibits most counties from engaging in planning and zoning, and any change in this practice would be a significant political shift (Capital, 2009).

This stands in stark contrast to the authority of home rule cities, which is comparably broad. Texas municipalities have the ability to assess impact fees and can examine development in the extraterritorial jurisdiction, powers that are not common across all states (Ibid, 2009). Some local officials have argued that additional authority

would allow counties to plan for significant growth, especially those in close proximity to major cities. Supporters of the status quo believe that residents choose unincorporated areas for their rural aesthetic and limited regulatory oversight and that counties should only have purview over matters of health and safety. They also may favor protecting private property rights and support limited local government (Ibid, 2009).

Counties have limited powers regarding land use planning, except in relation to subdividing land, utilities, and environmental issues. With minor exceptions, subdivision authority gives counties the ability to require certain standards of developers such as transportation infrastructure, environmental controls, and water planning. If the subdivided plats are proposed near a current or future major transportation corridor, counties can delay approval for a stricter review. Water, wastewater, and stormwater controls provide another avenue for counties to regulate development. There are various other provisions in statute that allow limited planning authority including: airport zoning, floodplain management, sexually oriented businesses, solid waste disposal, and wrecking and salvage yards (Ibid, 2009).

Aside from the authority that all counties enjoy, some have select land control powers directed by statute. For example, counties within 50 miles of the Mexican border have the ability to establish planning commissions, akin to municipalities. Counties with a population of 250,000 or greater, or those adjacent to such a county, can pass fire codes that apply to commercial development or multifamily housing. To prevent groundwater contamination, the state's largest counties can regulate water wells and on-site sewage. Some specific counties do have zoning powers in unincorporated areas, but this authority is quite rare (Ibid, 2009).

While the legislature rarely grants counties additional oversight authority, one such case occurred in the 2009 legislative session. As filed, House Bill 2833 allowed counties

along the international border to adopt building codes for residential construction with narrow enforcement provisions. It easily passed through the House and a similar version passed the Senate with minimal opposition. In the final days of session, a conference committee report was released that expanded this authority to all but one of Texas' counties. The authors of that report intended to continue the functions of the recently abolished Texas Residential Construction Commission, albeit through county government (Texas County, 2010). While it gained little opposition in the Senate, it passed the House with 72 affirmative votes and 71 in opposition, a bare majority.²⁵ It is worth noting that this vote fell mostly along partisan lines and the House that session was nearly equally divided between the two parties.

6.2. Local Planning Bills and the Senate Tradition

The legislature debates numerous bills relating to local land use authority each session. In the last two sessions, there have been instances of such bills receiving between a three-fifths and two-thirds affirmative vote; hence, they would not have been brought forwarded for debate prior to the 2015 rule change. There are nine bills in that subset, seven from the 2015 session and two from 2017. Of those, four were authored or sponsored by Republican Senators and can be interpreted as restricting local authority. The other five, authored by Democrats, attempted to expand it in some fashion. Four eventually became law during the regular session, and one was vetoed by the Governor. One issue that was debated in both sessions, and will be discussed in greater detail later, would limit certain types of municipal annexation. That measure was ultimately approved in the 2017 special

²⁵ <https://journals.house.texas.gov/hjrn/81r/pdf/81RDAY85FINAL.PDF#page=56>

session. This section will discuss those bills that relate to local land use authority that passed into law under the lower threshold.

House Bill 3535, in 2015, narrowed significantly as it progressed through the legislative process. As filed, it would create a new designation in statute, revitalization developments, which would receive a set-aside portion of the state's affordable housing funding in return for a municipality's commitment to invest in additional infrastructure. It had the support of many cities and housing advocates such as the Texas Low Income Housing Information Service.²⁶ The bill was significantly amended in committee such that it only pertained to the scoring matrix used to distribute affordable housing funding, favoring areas with higher poverty rates. This change was sufficient to place the bill on the local and consent calendar, reserved for non-controversial measures. Once the bill was debated in the Senate, it cleared the three-fifths threshold only due to an absence. The paired back bill eventually made it through conference committee, and it became law without the Governor's signature.

In 2015, Senate Bill 1436 dealt with one of the few explicit powers of county governments, even if the practical effect was minor. The bill required future automotive wrecking and salvage yards to be set back at least 50 feet from the nearest property line. Current law required the setback to begin from where the residence was located. Supporters of the bill argued this was too vague. For example, if a property had multiple buildings, the statute was unclear as to which should determine the setback.²⁷ The bill was primarily supported by the Webb County Commissioners Court.²⁸ It passed the House easily, and it was later signed by the Governor.

²⁶ <https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/HB03535S.pdf#navpanes=0>

²⁷ <https://hro.house.texas.gov/pdf/ba84R/SB1436.PDF>

²⁸ <https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB01436S.pdf#navpanes=0>

The lone bill that restricted local authority, and passed into law under the lower threshold, was Senate Bill 267 from 2015. The bill was in response to a recently approved city ordinance that prohibited owners or lessors from declining a prospective renter based on the source of their income. The author of the bill stated this local action created a new protected class, and it forced owners to participate in programs like the federal Housing Choice Voucher Program, also known as Section 8.²⁹ Detractors argued that those ordinances do not require an owner to participate in any program and the lessor may have additional criteria they apply to rental applications. Also, these so-called source of income protections helped people in many disadvantaged groups such as individuals with disabilities and veterans.³⁰ The bill was supported by the Texas Apartment Association and the Texas Association of Realtors, and it was opposed by numerous cities, faith groups, disability rights groups, and homeless advocates.³¹

While it did not become law, Senate Bill 1679 from 2015 is also notable in this context. The bill required a municipality to produce an economic analysis before adopting any change to a national model code for building. Existing law allowed cities to amend the International Building Code, the model for Texas, as they saw fit.³² The bill required any municipality with a population greater than 40,000 to publish a cost benefit analysis that included the proposed change's impact to the local economy, tax revenue, effect on additional growth and development, and additional cost per unit. The bill did not make it past the House committee where it was referred.

²⁹ <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/SB00267I.pdf#navpanes=0>

³⁰ <https://hro.house.texas.gov/pdf/ba84R/SB0267.PDF>

³¹ <https://capitol.texas.gov/tlodocs/84R/witlistbill/pdf/SB00267S.pdf#navpanes=0>

³² <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.214.htm#214.216>

6.3. The Special Session and Local Control

Following the contentious 2017 regular session, Governor Abbott called the Senators and Representatives back to Austin. The special called session was necessary as the legislature failed to pass a routine measure to continue the agency that licenses medical professionals (Svitek, 2017). Once they addressed that item, Abbott included an additional 19 priorities, many of which failed to pass in the previous legislative session. Of the 27 bills passed by the Senate in the special session, 13 included at least one suspension of the regular order of business. This was likely due, in part, to scheduling as timing is critical in the shorter special session, and suspending the rules allows the body to take up the bill at a specific time (as opposed to using the regular order of business and taking up bills as they were approved by committees). Note, the total number of bills debated by the Senate was greater than the Governor's 20 priorities, due to some priorities containing more than one bill and the Senate passing the House's version in addition to their own. Since the Senate was not consistently abiding by the rule tradition, the affirmative votes for passage varied substantially as shown below. Eight of the twenty priority items received an affirmative vote greater than a simple majority but below two-thirds.

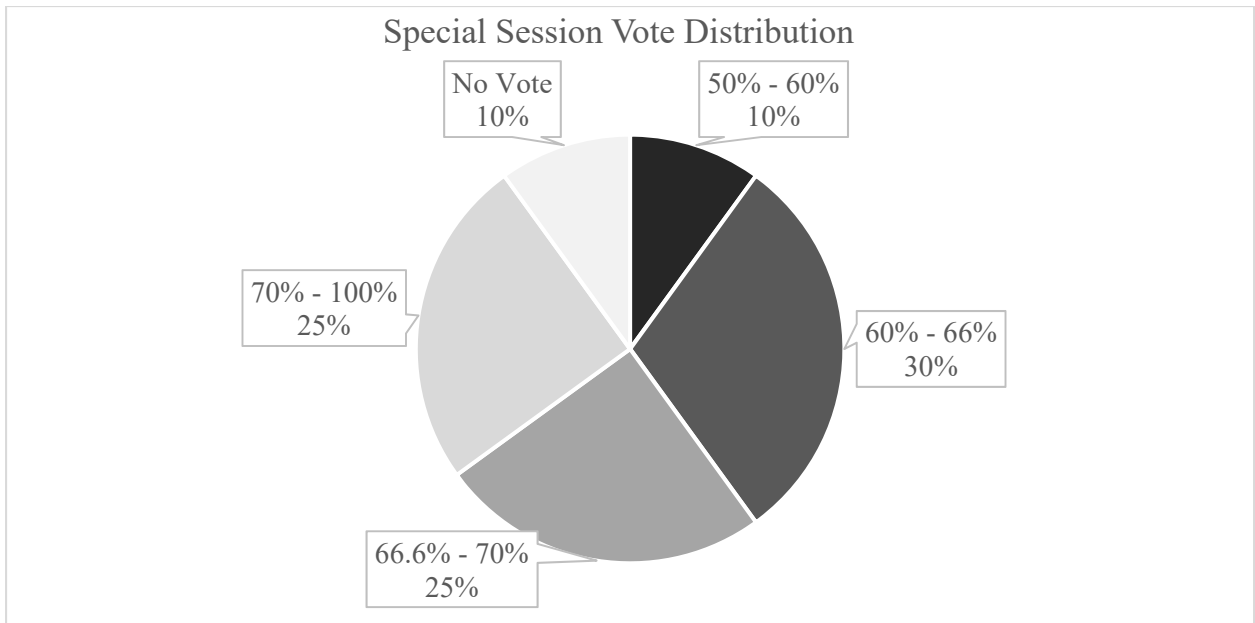


Figure 6.1: Special Session Vote Distribution

Numerous items in the Governor's call were seen as contentious, especially as they attempted to amend the authority of city and county governments. Two such issues were approved by the legislature and they will be detailed later. The items that did not pass into law include: limiting local governments' ability to raise revenue through property taxes, capping local government spending at the rate of population and inflation, overriding local ordinances on texting while driving, expediting city permitting, and prohibiting municipalities or counties from enforcing any ordinance or regulation that occurred after the owner acquired the title to the property (Texas Tribune, 2017). All but the last item were approved by the Senate, but they failed later in the process.

One of the Governor's priority items, which passed into law, sought to protect a private property owner's ability to use and enjoy property free from local regulations.³³ This charge became legislation that would prohibit local entities from enforcing so-called

³³ https://gov.texas.gov/uploads/files/press/AddingAdditionalItemsToCall_01202017.pdf

tree ordinances. Over 50 Texas cities approved a similar regulation that prohibited property owners from removing certain trees, without paying for mitigation or replanting trees in their stead (Duehren, 2017). Before adding this issue to his list of priorities, Abbott vetoed a similar measure during the regular session. He argued that it was compromise legislation, and the legislature should further restrict this practice.³⁴ While the Senate originally approved a more stringent bill in the special session, which outlawed heritage tree ordinances altogether, both chambers settled on a measure that appeared similar to the legislation Abbott vetoed (Texas Tribune, 2017). Both the stricter Senate version and the compromise language were approved by only 17 Senators, below both the two-thirds and three-fifths thresholds. During the regular and special session, these bills were primarily supported by the Texas Association of Builders, the Texas Association of Realtors, and the Texas Apartment Association.³⁵ Cities did not have a clear position, but seemed to favor the compromise legislation that eventually passed.

Arguably, the most controversial of the locally oriented items on the Governor's call was legislation that would further regulate a municipality's ability to annex territory. Similar bills were proposed in both the 2015 and 2017 regular sessions and each passed below the two-thirds threshold. In 2017, the annexation bill nearly made it into law, but it was filibustered on the last day of session. The legislation would prohibit most instances of limited purpose annexation, taking in an area to apply a city's zoning and health and safety regulations without providing municipal services. It would also require the residents of the proposed annexation to approve by election or petition.

³⁴ <https://gov.texas.gov/news/post/governor-abbott-vetoes-sb-744>

³⁵ <https://capitol.texas.gov/tlodocs/851/witlistbill/pdf/HB00007H.pdf#navpanes=0>

Numerous groups testified in support of the legislation during the regular³⁶ and special called session,³⁷ such as the Texas Farm Bureau, the Texas Association of Builders, and the Texas Association of Realtors. Interestingly, many residents of municipal utility districts, homeowner's associations, and rural areas adjacent to larger cities also supported the measure, no doubt due to the threat of an impending annexation. Many municipalities and towns opposed the legislation, because they believed the requirements were too onerous, and it limited their ability to plan for the growth in municipal service demand.³⁸ Senate Democrats seized on those and other issues, and they initiated a filibuster, impairing the passage of other bills in the queue (Pollock, 2017).

Unbeknownst to them, that victory would be short-lived, as Governor Abbott added annexation reform to his list of special session priorities. During the floor debate, detractors raised concerns that the proposed legislation would hamper a city's ability to regulate its surrounding area, especially as most municipalities in the state are growing rapidly. Opponents of the bill also argued that there were not sufficient protections for the state's military bases and that development in the city's extraterritorial jurisdiction may harm their mission (Wilson, 2017). While the legislation eventually made its way to the Governor's desk, lawmakers added a five-mile buffer for military bases to assuage those concerns. A similar provision was removed from the regular session version, which lead, in part, to the filibuster (Samuels, 2017).

For the two sessions following the rule change, the results for legislation regarding local land use and planning authority were mixed. Of the 74 bills in the broader subset, nine related to local authority in some way. Only four made it into law, and one was vetoed

³⁶ <https://capitol.texas.gov/tlodocs/85R/witlistbill/pdf/SB00715S.pdf#navpanes=0>

³⁷ <https://capitol.texas.gov/tlodocs/851/witlistbill/pdf/SB00006S.pdf#navpanes=0>

³⁸ <https://hro.house.texas.gov/pdf/ba85R/SB0715.PDF>

by the Governor. Those bills were primarily authored by Democrats and they sought to minimally increase city and county duties and powers. This is not surprising, given the previously discussed pivotal analysis and how bills from the left side of the spectrum were generally more narrow and incremental. The one Republican authored bill that passed into law overrode a municipal ordinance. Superseding local entities would become a theme of the following special session.

For the special called session, the Governor released an ambitious list of priorities, many of which related to local authority and land use planning. Two that passed into law, as detailed above, related to municipal annexation and limitations on local tree ordinances. These new laws will no doubt have significant implications for cities. However, other bills on the call may guide the path for future debates between local decision-making and state control. For example, the legislature considered a bill to speed up local permitting processes and to create predictability for approval deadlines (no more than 30 days after the permit is filed). While there were provisions for cities to seek an extension, numerous municipalities opposed the bill.³⁹ A more controversial measure would have prohibited cities from enforcing any regulation approved after the property was purchased by its current owner. One of the few Governor's priorities not passed by the Senate in the special session, the bill garnered criticism because it "could have far-reaching consequences on environmental, health and other local ordinances in place in communities across the state (Texas Tribune, 2017)." These and other issues are likely the next front by which state and local leaders debate municipal and county authority for land use planning.

³⁹ <https://capitol.texas.gov/tlodocs/851/witlistbill/pdf/SB00013S.pdf#navpanes=0>

Chapter 7: Conclusion

During the decisive 2015 rules debate, the Dean of the Texas Senate implored the other members to seriously consider the actions they were about to undertake. He'd seen numerous changes to the upper chamber in his long tenure including the transition from one party in power to the other. While he believed the rule change would ultimately reduce the authority of the Senators and it would allow legislation that had not received full vetting to move too quickly through the process, he thought both sides had made too much of the effects. "[I]t's probably not as bad as I'm standing here making it out to be because we're still going to deliberate, we're still going to have to work the floor. But I'd also suggest...it's not nearly as good as some of my other colleagues think changing it is going to be (Senate, 2015, 85)."

7.1. Notable Findings

Now that those effects have been thoroughly examined, his words seem prophetic. Of course, any new law is significant in its own way. The 21 bills that passed in 2015 and 2017 have substantial implications for many in the state. But they represent less than 1% of the total legislation approved during those sessions. In that subset of bills were measures that amended local land use planning, most of which narrowly expanded county and city authority. The subset also contained legislation that significantly reined in municipal annexation.

The history of the two-thirds tradition is not nearly as cut and dry as supporters or detractors believed. It evolved over the course of many sessions and it was a significant departure from the historic operation of the body. However, the Senate of that time was different in many ways, not just partisan makeup, from the body today. The tradition was

also circumvented numerous times, by both parties, usually for political or partisan measures. The march towards amending the two-thirds tradition began as early as 2007, and it slowly gained momentum over the next four legislative sessions. This was catalyzed by, or at least aided in, significant turnover in the Senate from 2013-2015.

The relevant literature had significant lessons for legislative behavior as it relates to this topic. Krehbiel's *Pivotal Politics* analyzes political decision-making to find the most important players in that process. By producing a unidimensional policy space, the pivotal points can be determined and the median voter and filibuster (rule) pivot located (Krehbiel, 2010). These theories have real world implications as leadership find these points and use them to influence policy outcomes. Ideal point estimation is one tool that can be used to determine where each member is located on that space. While debate surrounds the meaning, interpretation, and significance of these points, these models have furthered our understanding of political decision-making. In *Politics or Principle*, Binder and Smith sought to separate the rhetorical basis for the United States Senate's filibuster from the practical realities. They determined that few Senators have a principled position on unlimited debate and that most vote based on their assessment of the underlying policy matter. They also discuss the little harm thesis, the belief that no measure of importance had been hindered by the cloture rule (Binder, 1996). In the Texas version, few of the Senate leadership's priority bills were overtly halted by the two-thirds tradition, and those bills fared about as well as their House counterparts.

By analyzing the bills passed under the lower threshold, some trends emerge. While the partisan, regional, and member distribution are unremarkable, the Republican bills were generally heard earlier and were of greater political consequence. The 2017 session was also more contentious in many measures than 2015. In 2017, far fewer of the bills in the subset made it into law. The results of the rule change were significant, if not, substantial.

In looking at how the Senators voted on each of the bills in the subset passed under the lower threshold, the pivotal players emerged. The Republicans not only had higher pivotal scores, but they were also more disparate than their Democratic colleagues. Those pivotal scores correlated significantly with Jones' Bayesian ideal point estimation analysis. While not entirely surprising, it does show that a spatial estimation can be used to determine the pivotal players in legislative proceedings. The rule change had a significant effect, especially on bills from the Republican side of the chamber. Legislation emerging from the Democratic side saw insignificant change to the pivotal decision-maker.

The change had significant policy implications, such as municipal and county planning and land use authority. Historically, counties have significantly fewer vested powers than their municipal counterparts. In both sessions, Senators from both parties proposed legislation that would change the powers and duties of local governments in those regards. This was especially true during the 2017 special session as the Governor included numerous items on his agenda such as annexation, planning and permitting, and heritage tree ordinances.

7.2. Future Policy Implications

While this research focused on the two sessions following the change in the Senate's rule to suspend the regular order of business, it will have a significant effect moving forward. There will be additional measures passed between a three-fifths and two-thirds affirmative vote. Also, it is important to note that the threshold is not permanent. A future Senate may decide it suits the body to have a simple majority vote to suspend the regular order of business. As the rules require only a majority of Senators to approve of

any change, it is not out of the realm of possibility, especially if the Senate finds itself with a small partisan divide or shift in the party in power.

As the research displayed, the change did effect a relatively small number of bills, but they were some of the most consequential and divisive of the session. There is no reason to doubt this will not be the case moving forward. Texas is not immune to the growing polarization and contentiousness of American politics. Some may argue that the rule change was an example of this in practice. Whether the rule change pertains to only 1% of legislation, or more, its consequence will be felt in the state legislature for some time.

7.3. Additional Research Opportunities

Every legislative body is a living organism, changing and adapting with the surrounding environment. While the partisan split has held relatively steady in the past decade and a half, each election brings new Senators, and with them, a new dynamic to the chamber. This makes every session an opportunity to examine the pivotal players. If an individual had more resources, the individual could analyze every vote taken to determine if the results are relatively similar to the narrow subset addressed in this research. This analysis could also be extended to the Texas House of Representatives. As ideal point estimation becomes more widely used, especially in the Texas context, the comparison between it and a pivotal analysis also could be continued.

Like ideal point estimation, many theories in political science are created to address a phenomenon in the national context and later applied to state and local governments. This is not surprising, albeit unfortunate, as lower levels of government have substantial influence on their resident's lives. In addition to the pivotal politics theory, other theories, such as party polarization, could be applied to state and city governments.

While this research did not delve into many of the policy issues, there is plenty to discuss. Every bill's history tells a different story, each of which is interesting in some way. This could extend into a deeper analysis including stakeholder interviews, which often paint the most accurate picture as to how words on paper will actually effect the lives of Texans.

There is also significantly more to explore in the realm of Texas political development. While this research focused on the two-thirds tradition in the Senate's rules, there are other examples of rules that alter the policy outcomes of legislative bodies. Violations of these rules, and the points of order that follow, are weapons used against the progress of legislation, and they can stop even the most popular bill in its tracks. As Congressman John Dingell supposedly once said, "I'll let you write the substance...you let me write the procedure, and I'll screw you every time."

Appendices

Appendix A: 2015 Subset

Bill	Author/ Sponsor	Suspension Date	Last Significant Action	Votes - Yes	Votes - No	Votes - Present	Total Votes	Support Percentage	Notes
SB 17	Estes	3/16/2015	Referred to House Committee	20	11		31	64.52%	
SB 11	Birdwell	3/18/2015	Effective - Signed	20	11		31	64.52%	
SB 267	Perry	4/7/2015	Effective - Signed	20	11		31	64.52%	(Third Reading)
SB 10	Huffman	4/8/2015	Point of Order Sustained in House	20	11		31	64.52%	
SB 9	Hancock	4/9/2015	Conference Committee Appointed	19	12		31	61.29%	
SCR 1	Creighton	4/13/2015	Reported from House Committee	20	11		31	64.52%	
SB 601	West	4/14/2015	Reported from House Committee	19	12		31	61.29%	
SB 4	Taylor, L.	4/20/2015	Referred to House Committee	19	11		30	63.33%	
SB 1032	Watson	4/21/2015	Vetoed by Governor	19	11		30	63.33%	
SB 900	Taylor, L.	4/22/2015	Effective - Signed	18	12		30	60.00%	
SB 735	Fraser	4/28/2015	Effective - Signed	20	11		31	64.52%	
SB 837	Watson	4/28/2015	Effective - Not Signed	19	12		31	61.29%	
SB 228	Creighton	4/30/2015	Referred to House Committee	20	11		31	64.52%	(Third Reading)
SB 1356	Hinojosa	5/4/2015	Effective - Signed	20	11		31	64.52%	
SB 1436	Zaffirini	5/4/2015	Effective - Signed	20	11		31	64.52%	
SB 455	Creighton	5/4/2015	Effective - Signed	20	11		31	64.52%	(Third Reading)
SB 1575	Rodriguez	5/5/2015	Reported from House Committee	20	11		31	64.52%	(Third Reading)
SB 723	Perry	5/5/2015	Reported from House Committee	20	11		31	64.52%	
SB 1242	Rodriguez	5/6/2015	Reported from House Committee	19	12		31	61.29%	
SB 1252	Hall	5/6/2015	Referred to House Committee	20	11		31	64.52%	
SB 1679	Huffines	5/6/2015	Referred to House Committee	20	11		31	64.52%	
SB 62	Huffines	5/6/2015	Referred to House Committee	20	11		31	64.52%	
SB 779	Huffman	5/6/2015	Reported from House Committee	20	11		31	64.52%	
SB 1968	Huffman	5/7/2015	Referred to House Committee	20	11		31	64.52%	
SB 374	Schwertner	5/7/2015	Effective - Signed	20	11		31	64.52%	
SB 1639	Campbell	5/14/2015	Referred to House Committee	20	11		31	64.52%	
SB 1813	Kolkhorst	5/14/2015	Passed to Engrossment	20	11		31	64.52%	
SB 2063	Lucio	5/14/2015	Passed to Engrossment	20	11		31	64.52%	
SB 1568	Lucio	5/21/2015	Referred to House Committee	20	10	1	31	64.52%	(Third Reading)
SB 531	Campbell	5/21/2015	Reported from House Committee	19	12		31	61.29%	
HB 910	Estes	5/22/2015	Effective - Signed	20	11		31	64.52%	
HB 3535	Menendez	5/24/2015	Effective - Not Signed	18	12		30	60.00%	
HB 1690	Huffman	5/25/2015	Effective - Signed	20	11		31	64.52%	
HB 1514	Creighton	5/26/2015	Effective - Signed	20	11		31	64.52%	(Third Reading)
HB 2655	Estes	5/26/2015	Effective - Signed	19	11		30	63.33%	
HB 2684	Whitmire	5/26/2015	Effective - Signed	20	11		31	64.52%	

Appendix B: 2017 Subset

Bill	Author/ Sponsor	Suspension Date	Last Action	Votes - Yes	Votes - No	Votes - Present	Total Votes	Support Percentage	Notes
SB 4	Perry	2/7/2017	Effective - Signed	20	11		31	64.52%	
SJR 2	Birdwell	2/28/2017	Effective - Approved by Voters	20	11		31	64.52%	
SB 2	Bettencourt	3/21/2017	Reported from House Committee	18	12		30	60.00%	
SB 20	Taylor, L.	3/22/2017	Reported from House Committee	19	10		29	65.52%	
SB 9	Hancock	3/29/2017	Referred to House Committee	20	11		31	64.52%	
SB 13	Huffman	3/29/2017	Referred to House Committee	20	11		31	64.52%	
SB 3	Taylor, L.	3/30/2017	Referred to House Committee	19	12		31	61.29%	
SB 452	Hancock	4/3/2017	Reported from House Committee	20	11		31	64.52%	
SB 570	Rodriguez	4/4/2017	Vetoed by Governor	20	11		31	64.52%	(Third reading)
SB 18	Seliger	4/4/2017	Left Pending in Committee	20	11		31	64.52%	
SB 409	Huffines	4/10/2017	Referred to House Committee	20	11		31	64.52%	
SB 75	Nelson	4/10/2017	Reported from House Committee	20	11		31	64.52%	
SCR 3	Creighton	4/12/2017	Reported from House Committee	20	11		31	64.52%	
SCR 1	Buckingham	4/19/2017	Reported from House Committee	20	11		31	64.52%	
SB 715	Campbell	4/20/2017	Point of Order Sustained in House	19	11		30	63.33%	
SB 260	Huffines	4/20/2017	Referred to House Committee	20	11		31	64.52%	
SB 949	Kolkhorst	4/20/2017	Reported from House Committee	20	11		31	64.52%	
SB 518	Miles	4/26/2017	Referred to House Committee	20	11		31	64.52%	
SB 1733	Birdwell	4/27/2017	Referred to House Committee	20	11		31	64.52%	
SB 196	Garcia	5/1/2017	Vetoed by Governor	19	12		31	61.29%	
SB 762	Menedez	5/2/2017	Effective - Signed	20	11		31	64.52%	
SB 2094	Hall	5/8/2017	Referred to House Committee	20	11		31	64.52%	
SB 764	Huffines	5/8/2017	Referred to House Committee	20	11		31	64.52%	
SB 1294	Buckingham	5/9/2017	Left Pending in Committee	20	11		31	64.52%	
SB 1018	Hughes	5/9/2017	Referred to House Committee	20	11		31	64.52%	
SB 1443	Creighton	5/11/2017	Referred to House Committee	20	11		31	64.52%	(Third reading)
SB 1151	Buckingham	5/11/2017	Referred to House Committee	20	10	1	31	64.52%	
SB 1786	Hall	5/11/2017	Vote Failed in House Committee	20	11		31	64.52%	
SCR 47	Hughes	5/11/2017	Referred to House Committee	20	11		31	64.52%	
SB 1683	Lucio	5/15/2017	Referred to House Committee	19	12		31	61.29%	
SB 1696	Lucio	5/16/2017	Referred to House Committee	18	12		30	60.00%	
SB 370	Garcia	5/17/2017	Referred to House Committee	19	11		30	63.33%	
HB 25	Hancock	5/18/2017	Effective - Signed	19	11		30	63.33%	(Third reading)
HB 3294	Estes	5/22/2017	Effective - Not Signed	20	11		31	64.52%	
HB 2691	Huffman	5/22/2017	Conference Committee Appointed	20	11		31	64.52%	(Third reading)
HB 3808	Menedez	5/23/2017	Effective - Signed	20	11		31	64.52%	
HB 550	Perry	5/23/2017	Conference Committee Not Appointed	20	11		31	64.52%	
HB 2792	Rodriguez	5/23/2017	Vetoed by Governor	20	11		31	64.52%	

Appendix C: 2015 Pivotal Analysis by District

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
SB 17	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 11	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 267	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 10	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 9	0	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SCR 1	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 4	1	1	0	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	1	1	0	1	-		
SB 900	1	0	1	1	1	0	1	0	1	0	1	0	1	1	1	0	1	1	0	1	1	0	1	0	1	0	1	0	1	0	1	-	
SB 735	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1		
SB 228	1	1	1	1	1	0	1	1	1	0	1	1	0	1	1	0	1	1	1	1	0	0	0	0	1	0	1	1	1	0	1	0	
SB 455	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 723	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 779	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 1252	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 62	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 1679	0	1	1	1	1	0	1	1	1	1	0	1	0	0	1	1	1	1	0	0	0	1	0	1	1	0	1	1	1	0	1	1	
SB 1968	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 374	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
SB 1813	1	1	1	1	1	0	1	1	1	1	1	0	0	0	0	1	0	1	0	1	0	1	0	1	1	0	1	1	1	0	1	1	
SB 1639	1	1	1	1	1	0	1	1	1	1	0	1	0	0	0	1	1	1	0	0	0	1	1	1	1	0	1	1	1	0	1	0	
SB 531	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	0	1	0	
HB 910	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
HB 1514	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	1	
HB 1690	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1	0	
HB 2655	0	1	1	1	1	0	1	0	1	1	1	1	0	0	0	1	1	1	0	0	1	1	0	-	1	0	1	1	0	1	0	1	0
SB 601	1	0	1	0	0	1	0	0	0	0	1	1	1	1	1	0	1	0	1	0	1	0	1	1	0	1	1	0	1	1	1	0	
SB 1032	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	1	0	0	1	1	1	1	1	0	1	1	1	0	1	1	-	0	
SB 837	1	0	1	1	0	1	1	0	0	0	1	0	1	1	1	0	0	0	1	1	1	0	1	0	1	1	1	0	1	1	1	1	
SB 1436	1	0	0	1	0	1	1	0	0	0	1	0	1	1	1	0	1	1	1	1	1	0	1	1	1	1	1	1	0	1	1	0	
SB 1356	1	0	1	1	1	0	1	0	0	0	0	1	1	1	1	0	1	0	1	1	1	0	1	0	0	1	1	1	1	1	1	0	
SB 1575	1	0	1	0	0	1	0	0	0	0	1	1	1	1	1	0	1	0	1	1	1	0	1	1	1	1	1	0	1	1	1	1	
SB 1242	1	0	1	0	0	1	0	0	0	0	0	1	1	1	1	0	1	1	1	1	1	1	1	0	0	1	1	0	1	1	1	1	
SB 2063	1	0	0	0	1	1	0	0	0	0	1	0	1	1	1	1	1	1	1	1	1	0	1	1	1	1	1	1	0	1	1	0	
SB 1568	1	0	0	1	0	1	0	0	0	0	0	1	1	1	1	1	0	1	1	1	1	0	-	1	1	1	1	0	1	1	1	1	
HB 3535	1	0	0	0	0	0	1	0	0	-	0	1	1	1	1	0	1	0	1	1	1	0	1	1	0	1	1	0	1	1	1	1	
HB 2684	1	0	0	0	1	1	0	0	0	0	1	0	1	1	1	0	1	0	1	1	1	1	1	1	1	1	1	1	1	1	0	0	

Appendix D: 2017 Pivotal Analysis by District

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
SB 4	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1
SJR 2	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1
SB 2	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	-	0	0	1	0	1	0
SB 20	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	-	-	0	1	1	0	1	1
SB 9	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 13	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 3	1	1	0	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	1	1	0	1
SB 452	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 18	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1
SB 409	1	1	0	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	1	1	0	1
SB 75	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SCR 3	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	0	0	1	0	1	1
SCR 1	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 949	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 260	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 715	1	1	1	1	1	0	1	1	1	1	0	1	0	0	0	1	1	1	0	0	0	1	-	1	1	1	0	0	1	0	1
SB 1733	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 2094	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 764	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 1294	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 1018	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 1443	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SCR 47	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 1786	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
SB 1151	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	1	0	1	0	1	1	1	0	0	1	0	1
HB 25	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	-	0	0	0	1	0	1	1	1	0	0	1	0	1
HB 2691	1	1	1	1	1	0	1	1	1	1	1	1	0	0	0	1	1	1	0	0	0	1	0	1	1	1	0	0	1	0	1
HB 3294	1	0	0	1	0	1	0	0	0	0	1	1	1	1	1	0	1	0	1	1	1	0	1	1	0	1	1	1	1	1	1
HB 550	0	0	1	1	1	1	1	0	0	0	1	0	0	1	1	0	1	0	1	1	1	0	1	0	1	1	1	1	1	1	1
SB 570	0	0	1	0	0	1	0	0	0	0	1	1	1	1	1	1	1	0	1	1	1	1	1	0	0	1	1	1	1	1	1
SB 518	0	0	1	0	1	1	1	1	0	0	1	1	1	1	1	0	1	0	1	1	1	1	1	0	0	1	1	0	1	0	1
SB 196	1	0	0	0	0	1	0	0	0	0	1	1	1	1	1	0	1	0	1	1	1	1	1	0	1	1	1	0	1	1	1
SB 762	0	0	0	0	1	1	0	0	0	0	1	1	1	1	1	1	1	0	1	1	1	1	1	0	1	1	1	0	1	1	1
HB 3808	0	0	1	0	1	1	0	0	0	0	1	1	1	1	1	0	1	0	1	1	1	0	1	1	0	1	1	1	1	1	1
SB 1683	1	0	0	0	1	1	0	0	0	0	0	0	1	1	1	0	1	1	1	1	1	0	1	1	0	1	1	1	1	1	1
SB 1696	1	0	0	1	0	1	0	0	1	0	1	0	1	1	1	0	1	1	1	1	1	0	1	0	0	-	1	0	1	1	1
SB 370	1	0	0	0	0	1	0	0	0	0	1	1	1	1	1	1	1	1	-	1	1	0	1	0	1	1	1	1	1	0	1
HB 2792	0	0	1	0	0	1	1	0	0	0	1	1	1	1	1	0	1	0	1	1	1	0	1	1	0	1	1	1	1	1	1

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Vita

William Brady Franks was born and reared in suburban Houston, Texas. Following graduation, he attended the University of Texas at Austin and earned a Bachelor of Arts in Government with a minor in Sociology. Aside from a brief sojourn to Washington, D.C., he's resided in Austin, Texas ever since. During and after both educational stints, he worked in the Texas House of Representatives in various offices and roles. There he gained a deep appreciation and admiration for the workings of state government and those who serve in and out of office. He currently serves as the Director for Government Relations at the University of Texas at Austin, his alma mater.

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